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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91182173
Party	Defendant FF Acquisition, L.L.C.
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Submission	Motion for Summary Judgment
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Odom's Tennessee Pride Sausage, Inc.,	)	Opposition No. 91182173
)	
Opposer,	)	Mark: Boy Design
)	
v.	)	Serial No.: 77/148,503
)	
FF Acquisition, L.L.C.,	)	Filing Date: April 4, 2007
)	
Applicant.	)	Published: October 2, 2007
)	

APPLICANT FF ACQUISITION, L.L.C.'S MOTION FOR SUMMARY JUDGMENT

Applicant, FF Acquisition, L.L.C., by and through its counsel, hereby moves for summary judgment pursuant to Fed. R. Civ. Proc. 56, that Opposer's opposition be dismissed with prejudice. Opposer's claims are estopped by Opposer's failure to object to Applicant's use and registration of Registration No. 1,222,958 since 1977 and 1982, respectively. Registration No. 1,222,958 is virtually identical to the design mark claimed in Application Serial No. 77/148,503. In addition, there is no likelihood of confusion between Application Serial No. 77/148,503 and Opposer's design mark.

Applicant's motion is supported by:

- (1) Applicant's Memorandum in Support of Its Motion for Summary Judgment;
- (2) The Declaration of Heather J. Kliebenstein, and exhibits attached thereto;
- (3) The Declaration of Susan Mayo; and
- (4) The pleadings herein.

In the alternative, if FF's Motion for Summary Judgment is denied, FF requests the Board extend all discovery and trial dates in this matter by sixty (60) days from the date of the Board's decision on the Motion for Summary Judgment.

Respectfully submitted,

FF ACQUISITION, L.L.C.

Date: 9-26-08

A handwritten signature in black ink, appearing to read "S. Johnston", written over a horizontal line.

Scott W. Johnston

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S MOTION FOR SUMMARY JUDGMENT was served upon the following attorney of record for Opposer by First Class Mail, postage prepaid, this 26 day of September, 2008:

Marsha G. Gentner
Jacobson Holman PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004



Scott W. Johnston

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APPLICANT'S MEMORANDUM IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

At issue in this case is whether two visually unique design marks, independently created over thirty years ago and coexisting in the market since then, are confusingly similar. The undisputed evidence shows confusion is unlikely. Opposer Odom's Tennessee Pride Sausage, Inc.'s "Pilgrim Boy Design" and Applicant FF Acquisition, L.L.C.'s "Farmer Boy Design" are dissimilar in so many ways that no consumer is going to be confused when they are used on their respective goods and services.



Moreover, FF Acquisition ("FF") has been using the same Farmer Boy Design (only without the arms or legs) to promote its retail grocery store services, without objection from Odom's, for more than thirty years, and has owned a registration for that mark since 1982.

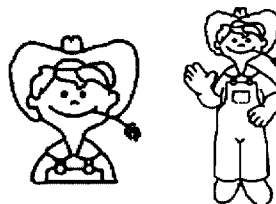
FF began using its Farmer Boy character in 1977 to promote its retail grocery store services. On August 28, 1980, FF filed an application to register the Farmer Boy character as shown below for “supermarket services” in International Class 42:



The application published for opposition October 12, 1982, went unopposed by Odom’s, and registered as Registration No. 1,222,958 on January 4, 1983. The Registration became incontestable in 1988 and was renewed in 2003. It is conclusive evidence of FF’s ownership of the mark and exclusive right to use the mark in commerce.

At no time in the past thirty years has Odom’s objected to FF’s use or registration of the Farmer Boy depicted in the ‘958 Registration. In addition, FF has never encountered any confusion with Odom’s or any of its alleged marks.

In 2007, FF filed an application to register its Farmer Boy Design with arms and legs for “retail grocery store services.” The application was assigned Serial No. 77/148,503 (the “‘503 Application”). The marks covered by FF’s prior registration and the ‘503 Application are depicted below:



Notwithstanding the incontestable registration and long-time peaceful coexistence, Odom’s now contends that FF’s addition of arms and legs to the Farmer Boy Design is going to cause confusion. Given that (1) FF owns an incontestable registration for the Farmer Boy Design without arms and legs, (2) the added arms and legs bear no resemblance to those of

Odom's Pilgrim Boy Design, (3) the marks are strikingly different as a whole, and (4) the marks are being registered for different goods and services, confusion is not likely and Odom's opposition should be denied. Accordingly, this case should be resolved on summary judgment as no triable issues of fact exist. In the alternative, if FF's Motion for Summary Judgment is denied, FF requests the Board extend all discovery and trial dates in this matter by sixty (60) days from the date of the Board's decision on the Motion for Summary Judgment.

II. FACTUAL BACKGROUND

A. FF Has Used its Farmer Boy Design in Connection with Supermarket Services Since 1977.

FF currently does business as Farm Fresh Supermarket. (Decl. of Susan Mayo in Supp. of App.'s Mt. for Summ. Judgment ("Mayo Decl.") ¶ 2.) Farm Fresh Food & Pharmacy, which later became Farm Fresh Supermarket, was formed in 1957 as a neighborhood grocery store with world class services. (*Id.*) There are currently forty-six (46) Farm Fresh Supermarket stores in the United States. (*Id.*)

FF's Farmer Boy Design was created in 1977 to designate FF's supermarket services. (Mayo Decl. ¶ 5.) The '958 Registration claims "supermarket services" in International Class 42 for the following design:

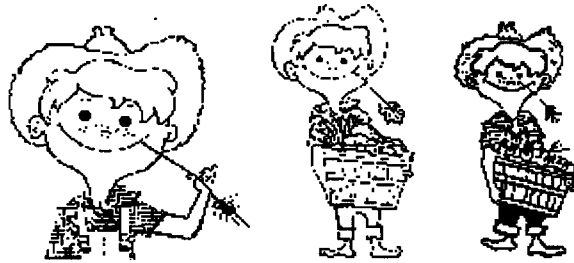


(Decl. of Heather J. Kliebenstein in Supp. of App.'s Mt. for Summ. Judgment ("Kliebenstein Decl.") Ex. A.)

FF has continuously used this mark in U.S. commerce since at least October 5, 1977. (Mayo Decl. ¶ 5.) The Farmer Boy Design consists of a smiling, forward-looking boy dressed as a farmer wearing overalls. The boy wears a broad-rimmed cowboy hat and has a piece of straw

stuck in his mouth. The farmer boy's eyes, mouth and nose are cartoon-like. The '958 Registration issued on January 4, 1983. (Kliebenstein Decl. Ex. A.) This registration is conclusive evidence of incontestability pursuant to 15 U.S.C. § 1065.

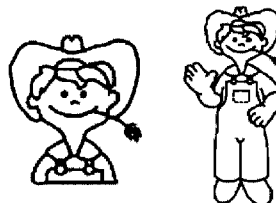
FF also owned other registrations for variations of its Farmer Boy Design mark for bacon (Reg. No. 1,222,760), margarine (Reg. No. 1,222,761) and bread (Reg. No. 1,222,795):



(Id. at Exs. B-D.)

The '761 and '795 registrations display legs and arms. (Id. at Exs. C-D.) All three applications were filed on August 28, 1980 and were registered on January 4, 1983. (Id. at Exs. B-D.) All three registrations were canceled on October 11, 2003, for failure to renew. (Id.)

On April 4, 2007, FF filed Application Serial No. 77/148,503 for the Farmer Boy Design for "retail grocery store services" in International Class 35. (Id. at Ex. E.) The '503 Application is nearly identical to the '958 Registration:






(Id. at Exs. A and E.) FF has used this design in U.S. commerce in connection with Farm Fresh Supermarket's retail grocery store services since at least March 28, 2007. (Id. and Mayo Decl. ¶

4.) The Farmer Boy Design is used in commerce on the Farm Fresh Supermarket newsletters and advertisements. (Mayo Decl. ¶ 4.)






The Farmer Boy Design shown in the '503 Application consists of the original Farmer Boy Design but with hands and legs added. (*Id.* at Ex. E.) The derivative design is waving a large cartoon-like right hand with the left hand poised at the hip. (*Id.*) The farmer boy is wearing overalls and boots and stands still looking forward. (*Id.*) The designs in the '958 Registration and '503 Application are otherwise identical.




B. Odom's Uses a Pilgrim Boy Design in Connection with Food Products.

Odom's owns several registrations related to its Pilgrim Boy Design in International Classes 29 and 30.¹ These designs are displayed in the chart below:

Registration No.	Goods	Date of Registration and First Use	Mark
0,887,577	Sausage, souse in International Class 29	Registered: March 10, 1970 Date of First Use: June 1968	
0,885,136	Sausage, souse in International Class 29	Registered: January 27, 1970 Date of First Use: June 1968	
1,859,824	Sausage in roll, link and patty form; souse; barbequed pork; barbequed beef; head cheese; and prepared breakfast entrees consisting primarily of eggs, sausage, and cheese in International Class 29 Gravy; prepared breakfast entrees consisting primarily of	Registered: October 25, 1994 Date of First Use: December 15, 1993	

¹ For purposes of summary judgment, it is assumed that Odom's registrations are valid and currently used in U.S. commerce on the goods and services claimed in each registration.

	biscuit sandwiches; and prepared breakfast entrees consisting primarily of biscuits and gravy in International Class 30		
2,850,472	Breakfast sandwiches, namely sausage and biscuit sandwiches in International Class 30	Registered: June 8, 2004 Date of First Use: November 1, 2002	
3,019,210	Frozen breakfast sandwiches in International Class 30	Registered: November 29, 2005 Date of First Use: May 2002	
3,019,156	Fresh sausage rolls, links and patties; fresh souse; fully cooked sausage links and patties; sausage ball appetizers in International Class 29 Fresh frozen breakfast sandwiches; frozen appetizers, namely sausage hot dog sandwiches, wraps and swirls; and gravy in International Class 30	Registered: November 29, 2005 Date of First Use: 1943	
3,200,845	Fresh sausage rolls, links and patties; fully cooked sausage links and patties; appetizers consisting primarily of meat, namely, sausage balls, hot dog sandwiches, wraps and swirls in International Class 29 Frozen breakfast sandwiches in International Class 30	Registered: January 23, 2007 Date of First Use: March 2003	
3,200,875	Fresh sausage rolls, links and patties; fully cooked sausage links and patties; appetizers consisting primarily of meat, namely, sausage balls, hot dog sandwiches, wraps and swirls in International Class 29	Registered: January 23, 2007 Date of First Use: March 2003	

	Frozen breakfast sandwiches; gravy in International Class 30		
3,031,104	<p>Fresh sausage rolls, links and patties; fresh souse; fully cooked sausage links and patties; sausage ball appetizers in International Class 29</p> <p>Frozen breakfast sandwiches; frozen appetizers, namely sausage hot dog sandwiches, wraps and swirls; and gravy in International Class 30</p>	<p>Registered: December 20, 2005</p> <p>Date of First Use: 1943</p>	
1,861,064	<p>Sausage in roll, link and patty form; souse; and prepared breakfast entrees consisting primarily of eggs, sausage and cheese in International Class 29,</p> <p>Gravy; prepared breakfast entrees consisting primarily of biscuit sandwiches; and prepared breakfast entrees consisting primarily of biscuits and gravy in International Class 30</p>	<p>Registered: November 1, 1994</p> <p>Date of First Use: December 15, 1993</p>	
2,653,431	<p>Sausage in roll, link and patty form and souse; prepared breakfast entrees consisting primarily of eggs, sausage and cheese in International Class 29</p> <p>Prepared breakfast entrees consisting primarily of biscuit sandwiches in International Class 30</p>	<p>Registered: November 26, 2002</p> <p>Date of First Use: May 1998</p>	

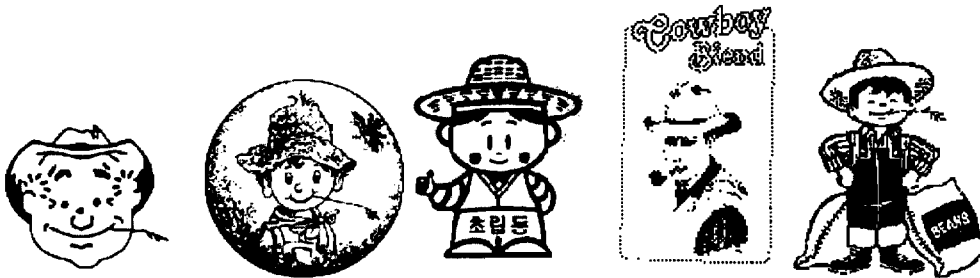
(Kliebenstein Decl. Ex. F.)

Each of Odom's Pilgrim Boy Designs consists of a barefooted boy with a large pilgrim hat wearing overalls. The boy is carrying a stick or a fishing pole in his right hand. In some of the registrations, the boy is striding forward with his right side visible. In other registrations, the boy is facing somewhat forward with the left hand extended upwards as if pointing. The boy has dimples and large facial expressions, including life-like eyes, nose, and smiling mouth. The

boy's legs are active and in some designs the boy is walking. In every design, the legs and feet of the Pilgrim Boy are separated.

C. “Boy Designs” are Common Marks for Food Products and Food-Related Services.

Boy designs are ordinary designs found in numerous registered marks for food products and related services. The Farmer Boy Design and Pilgrim Boy Design are not the only “boy designs” used in connection with food products and supermarket services. Over eighty “boy designs” have been registered in International Classes 29 and 30 after 2000 and in connection with food products. (Kliebenstein Decl. Ex. G.) A few “boy” designs are reproduced below:



(Id.) Each of these “boy designs” comprises a boy or a boy’s head smiling and wearing a hat. Several show a boy with overalls. All of these marks are valid and registered and claim they are currently used in commerce. There is no evidence that Odom’s has exercised its rights against any of these marks.

D. Origin of Proceeding and Current Posture.

FF filed Application Serial No. 77/148,503 on April 7, 2007. No other application or registration was cited by the Trademark Examiner as confusingly similar to the ‘503 Application, and the application published for opposition on October 2, 2007. (Id. at Ex. E.) Odom’s opposed registration of this application on January 30, 2008, claiming that registration of the ‘503 Application would result in confusion, mistake, and or deception as to the origin, sponsorship and/or association of FF’s services with Odom’s Pilgrim Boy Design. (Dkt. No. 1 at

¶ 8.) Odom's claimed that retail grocery store services were related to the goods in connection with which Odom's uses its Pilgrim Boy Design. (*Id.* at ¶ 7.)

FF answered on March 7, 2008, denying Odom's claims of a likelihood of confusion and the relatedness of the goods and services, among other things. (Dkt. No. 3.) FF also raised the affirmative defenses of laches, estoppel and/or acquiescence. (*Id.*) These defenses were predicated on the fact that Odom's cannot honestly claim damage from registration of the '503 Application as FF has owned a nearly identical registration since January 4, 1983. (*Id.*) FF also owned Registration Nos. 1,222,760, 1,222,761, and 1,222,795 for bacon, margarine, and bread, respectively, which Odom's never opposed or otherwise objected to. (*Id.*) As Odom's failed to take any action against Applicant for over thirty (30) years, Odom's is barred by laches, estoppel and/or acquiescence. (*Id.*) Accordingly, FF believes the action was meritless and therefore requests summary judgment denying the same.

III. LEGAL ARGUMENT

Summary judgment is an appropriate pre-trial method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. Fed. R. Civ. P. 56(c); Bongrain Int'l (American) Corp. v. Moquet, Ltd., 230 U.S.P.Q. (BNA) 626, 627 (TTAB 1989) (citing Buffet v. Chi-Chi's, Inc., 226 U.S.P.Q. (BNA) 428 (TTAB 1985)). A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to summary judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-323 (1986); Sweats Fashions Inc. v. Pannill Knitting Co., Inc., 833 F.2d 1560, 1562-1563, 4 U.S.P.Q.2d 1793, 1796 (Fed. Cir. 1987). A party opposing summary judgment must "come forward with countervailing evidence establishing a need for trial." Spin Physics, Inc. v. Matsushita Electric Indus. Co., Ltd., 168 U.S.P.Q. (BNA) 605, 607 (TTAB 1970).

FF's Farmer Boy Design is entitled to registration because Odom's will not be damaged by registration of the '503 Application. Moreover, no likelihood of confusion exists between Odom's Pilgrim Boy Design and FF's Farmer Boy Design. See 15 U.S.C. §1052(d). FF acknowledges that Odom's has prior registration for the Odom's Pilgrim Boy Design for sausage and souse since June of 1968. However, Odom's Pilgrim Boy Design is not confusingly similar to FF's Farmer Boy Design. A multitude of third party marks dilute the Pilgrim Boy Design such that many elements of the design are not protectable. The Farmer Boy Design and Pilgrim Boy Design have peacefully co-existed for over thirty (30) years. Confusion is unlikely and any claim of damage upon registration of the '503 Application is untenable.

A. Odom's will not be Damaged by Registration of the '503 Application.

An opposer cannot be damaged within the meaning of the Lanham Act by registration of a mark for particular goods or services if an applicant already owns an existing registration for the same or substantially identical mark for the same or substantially identical goods and the opposer never objected to this registration. J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 20:38; Morehouse Mfg. Corp. v. Strickland & Co., 407 F.2d 881, 160 U.S.P.Q. (BNA) 715 (CCPA 1969); O-M Bread, Inc. v. U.S. Olympic Comm., 65 F.3d 933, 36 U.S.P.Q.2d (BNA) 1041 (Fed. Cir. 1995). This defense is equitable in nature and is a type of laches defense. Aquion Partner L.P. v. Enviogard Prods. Ltd., 43 U.S.P.Q.2d (BNA) 1371, 1373 (TTAB 1997) (the defense of laches is available in an Opposition based on an opposer's failure to object to an applicant's earlier registration that inadvertently expired.)

Odom's has been on notice that FF believes Odom's is precluded from claiming damage arising from registration of the '503 Application because Odom's never objected to the '958 Registration. FF's Answer, dated March 7, 2008, raised the affirmative defenses of laches, estoppel, and/or acquiescence because FF has owned a nearly identical registration since January

4, 1983 that Odom never objected to. (Dkt. No. 3) This defense also asserted that FF owned Registrations Nos. 1,222,760, 1,222,761, and 1,222,795 for bacon, margarine, and bread, respectively, which Odom's never opposed or otherwise objected to. (Id.) As Odom's failed to take any action against Applicant for over thirty (30) years, Odom's was barred by laches, estoppel and/or acquiescence. (Id.) This defense raised all elements required by the Morehouse defense. See, e.g., Morehouse Mfg., 407 F.2d at 884, 160 U.S.P.Q. (BNA) at 717.

The record shows these claims are factually supported in this case. Here, Odom's is precluded from claiming damage arising from registration of the '503 Application because Odom's never objected to the '958 Registration. (Mayo Decl. ¶ 7.) Odom's never objected to the registration or use of the '760, '761, or '795 Registrations. (Kliebenstein Decl. ¶ 6.) These registrations are virtually identical to the '503 Application. The services claimed in the '958 Registration and '503 Application are virtually identical. The '958 Registration claims "supermarket services." The '503 Application claims "retail grocery store services." A supermarket is a grocery store.

The marks are also virtually identical. The addition of legs and arms to the Farmer Boy Design as claimed in the '958 Registration is an insignificant variation. The face of the Farmer Boy Design remains the same. Moreover, the arms and legs do not add significant design ornamentation beyond the head and face of the original Farmer Boy Design. See Place for Vision, Inc. v. Pearle Vision Center, Inc., 218 U.S.P.Q. (BNA) 1022, 1023 (TTAB 1983) (issuance of registration for PEARLE VISION CENTER caused opposer no damage when applicant already had two registrations for VISION CENTER for similar goods and services).

Accordingly, Odom's is estopped from claiming damage due to registration of the '503 Application because Odom's never objected to the registration of the '958 Registration. These undisputed facts show that summary judgment is therefore appropriate.

B. Summary Judgment is Appropriate because the Material and Undisputed Facts Show the Farmer Boy Design and Pilgrim Boy Design are not Confusingly Similar.

Consumers will not be confused that Odom's is the origin of services offered in connection with FF's Farmer Boy Design. The Lanham Act precludes registration of a mark only if use of the mark is likely "when used on or in connection with the goods of the Registrant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d). The Board determines the likelihood of confusion on a case-by-case basis applying the factors set out in In re E.I. DuPont DeNemours & Co., 476 F.2d 1357, 1361, 77 U.S.P.Q. (BNA) 563, 567 (C.C.P.A. 1973). The relevant factors in this case include:

- 1) Strength of the prior mark;
- 2) Similarity of the marks;
- 3) The number and nature of similar marks in use on similar goods;
- 4) The similarity of the channels of trade;
- 5) Evidence of actual confusion.

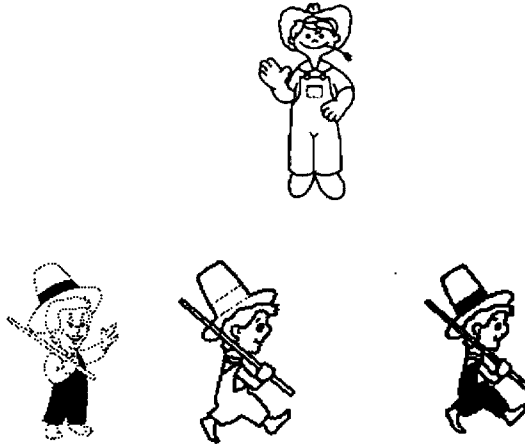
Id. (Br. at 19.) Not every DuPont factor must be considered by the Board. Han Beauty, Inc. v. Albert-Culver Co., 236 F.3d 1333, 1336, 57 U.S.P.Q.2d (BNA) 1577, 1559 (Fed. Cir. 2001) ("While it must consider each factor for which it has evidence, the board may focus its analysis on dispositive factors, such as similarity of the marks and relatedness of goods.") Some may be dispositive by themselves, such as strength of the mark asserted and similarity of the marks. As demonstrated below, applying these factors to the facts at hand compels the conclusion that registration is allowable because no confusion is likely.

1. The Marks are not Visually Similar.

Similarity of appearance is controlling where design marks are involved. TMEP § 1207.01(c); Red Carpet Corp. of Am. v. Johnstown Am. Enters., Inc., 7 U.S.P.Q.2d (BNA) 1404,

1405 (TTAB 1988) (two marks that created different visual impression were not confusingly similar). This is because “a purchaser’s recollection of design marks is often of a general and hazy nature.” Id. The Board has on several occasions found the dissimilarity of two marks to be a single dispositive DuPont factor in evaluating a likelihood of confusion. Id. (visual dissimilarity of the two designs in question was controlling); Champagne Louis Roederer S.A. v. Delicato Vineyards, 148 F.3d 1373, 1375, 47 U.S.P.Q.2d (BNA) 1459, 1461 (Fed. Cir. 1998) (dissimilarity of the marks in their entireties substantially outweighed any other relevant factors). The mere presence of a common feature does not mean confusion is likely. Beaute Prestige Int’l v. OroAmerica, Inc., 2002 TTAB LEXIS 155, *13-*14 (TTAB February 5, 2002) (merely because the marks have the same common feature of a woman without a head does not mean confusion is likely when other feature of the marks are so different). The Board has dismissed cases on summary judgment solely because the marks at issue were dissimilar. Missiontrek Ltd. v. Onfolio, Inc., 80 U.S.P.Q.2d (BNA) 1381 (TTAB 2005); Inspiration Software, Inc. v. Teacher Inspired Practical Stuff, Inc., Opposition No. 91164083 (March 7, 2007); Kellogg Co. v. Pack’Em Enterprises Inc., 951 F.2d 330, 21 U.S.P.Q.2d (BNA) 1142 (Fed. Cir. 1991), aff’g 14 U.S.P.Q.2d (BNA) 1545 (TTAB 1990) (FROOT LOOPS for cereal not confusingly similar to FROOTEE ICE for flavored liquid frozen into bars), and Keebler Company v. Murray Bakery Products, 866 F.2d 1386, 9 U.S.P.Q.2d (BNA) 1736 (Fed. Cir. 1989) (PECAN SANDIES and PECAN SHORTIES not confusingly similar as applied to cookies).

While the designs in question may be characterized as “boy designs,” they are vastly different visually. The suggestive connotation of the different boy designs may be common in a broad sense, but they are not similar. See id. The Farmer Boy Design and Pilgrim Boy Design are different in visual appearance:



(Kliebenstein Decl. Exs. E and F.)

Odom's Pilgrim Boy Design depicts a barefoot child carrying a fishing pole. The boy is shown facing sideways. The boy wears a tall hat with a ribbon directly above the brim. The Pilgrim Boy Design has a life-like smile, eyes, nose, and ears. The feet are small and narrow. On the other hand, FF's Farmer Boy Design depicts a boy facing forward who wears a short, wide brimmed hat. The Farmer Boy Design shows a boy wearing thick boots waving a thick hand. The Farmer Boy Design also includes a unique and distinctive piece of straw stuck in the character's mouth.

The common theme of a "boy design" is the only similarity between the marks. The visual distinctions between the marks precludes a finding of confusion and summary judgment is appropriate.

2. The Pilgrim Boy Design is Diluted because Many Similar Design Marks are Used on Food Products.

With respect to design marks, the existence of third party registrations of similar design marks is relevant to the issue of likely confusion because they show the marks at issue are in common use by others. Red Carpet Corp., 7 U.S.P.Q.2d (BNA) at 1406. Inclusion of a common element in each mark does not lead to a likelihood of confusion. Id. Consumers that are

accustomed to often seeing the general design at issue can readily distinguish among such marks based on small differences. Id.

Here, the concept of a “boy design” in connection with food products is in common use by others. Tens of unrelated third parties have long used and registered designs of men and/or children with hats in connection with food products and services. (Kliebenstein Decl. Ex. G.) FF has submitted to the Board evidence of over 80 registrations of boy designs for a food product. (Id.) All of these registrations are in International Class 29 or 30, as are Odom’s registrations for the Odom’s Designs. (Id.)

This common use and registration by unrelated third parties in the relevant industry confirms that it is the policy of the United States Patent and Trademark Office to allow designs of boys wearing hats to peacefully coexist on the Federal Register with only slight overall differences in design. Consumers are accustomed to seeing boy designs used in the marketplace in connection with food products and food-related services and will not be confused as to the origin of the Pilgrim Boy Design or the Farmer Boy Design. Given this widespread use of boy designs, the Pilgrim Boy Design is weak, diluted, and entitled to a narrow scope of protection. The lack of strength of the Pilgrim Boy Design is a dispositive factor in this proceeding.

3. No Evidence of Actual Confusion Exists Despite Coexistence of Both Designs for Over Thirty (30) Years.

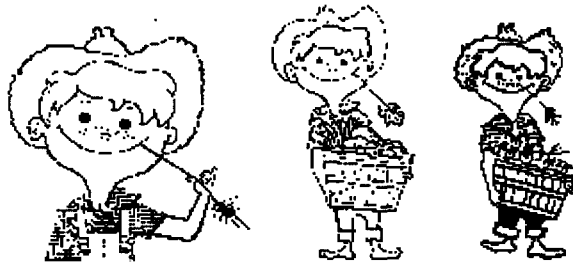
No evidence of actual confusion exists during the thirty (30) years the Pilgrim Boy Design and Farmer Boy Design have co-existed. FF has used the Farmer Boy Design (the ‘958 Registration) in connection with grocery store and supermarket services since at least as early as 1977. FF has owned the ‘958 Registration since January 4, 1983. The ‘958 Registration claims an identical Farmer Boy Design from the shoulders up as the ‘503 Application:



(Kliebenstein Decl. Exs. A and E.)

Yet no confusion has occurred between the '958 Registration and any of Odom's registrations. (Mayo Decl. ¶ 6.) In fact, Odom's Notice of Opposition failed to make a single reference to FF's incontestable U.S. Registration No. 1,222,958 for supermarket services.

Before this Opposition was filed, Odom's never believed any of FF's Farmer Boy Designs and the Pilgrim Boy Design were confusingly similar. For several years, FF owned other registrations for variations of its Farmer Boy Design mark for bacon (Reg. No. 1,222,760), margarine (Reg. No. 1,222,761) and bread (Reg. No. 1,222,795):



(Kliebenstein Decl. Exs. B-D.)

Two of these registrations, Nos. 761 and 795, contain legs and arms. (*Id.*) In fact, the feet shown in the '761 and '795 Registrations are far more similar to those in Odom's Pilgrim Boy Design than those at issue in the opposed application. All three applications were filed on August 28, 1980 and were registered on January 4, 1983. (*Id.*) These registrations were canceled on October 11, 2003, for failure to renew them. (*Id.*) Odom's never opposed these applications or petitioned to cancel these registrations even though they were all in use

simultaneous with Odom's Pilgrim Boy Design, and covered food products—bacon, margarine, and bread. (Kliebenstein Decl. ¶ 6.)

The USPTO never believed FF's Farmer Boy Design was confusingly similar to the Pilgrim Boy Design. The USPTO had multiple opportunities to consider whether the Farmer Boy Design and Pilgrim Boy Design were confusingly similar. The USPTO could have rejected several of Odom's applications filed after 1983 in view of the four preexisting FF registrations. The USPTO could have rejected FF's '503 Application in view of Odom's preexisting Pilgrim Boy Designs. The USPTO did not. Confusion is unlikely and Odom's claims should be dismissed.

4. The Number and Nature of Similar Marks Used on Similar Goods Demonstrates Confusion is Unlikely Because Boy Designs are Diluted.

FF's evidence of eighty-three (83) valid registrations claiming "boy designs" for food products and grocery store services shows Odom's cannot enforce the idea of a "boy design" against FF. Use by numerous third parties in a market reduces the individual distinctiveness of similar marks and makes confusion unlikely. Odom's and FF have coexisted in the marketplace for over thirty (30) years. Yet, Odom's failed to object to FF's use of the Farmer Boy Design until February 2008.

Boy design templates are heavily used by third parties in connection with food products and as a result are diluted. FF has produced ample evidence of actual third-party use. (Kliebenstein Decl. Ex. G.) All of these designs were registered in connection with goods in either International Class 29 or 30. In fact, all but three of these designs were registered after 2000. (*Id.*) Odom's has not directly policed its mark against these entities.

5. The Parties' Goods Are Not Similar.

Odom's registrations claim sausage and breakfast sandwiches, fresh and frozen. (Kliebenstein Decl. Ex. F.) While these products may be sold in grocery stores, they are not the same as retail grocery store services. FF uses the Farmer Boy Design on advertisements and promotional materials, including coupon books. (*Id.* at Ex. H and Mayo Decl. ¶ 4.) Odom's Pilgrim Boy Design is used on the packaging of its sausage and breakfast sandwiches. (Kliebenstein Decl. Ex. I.) Because the goods and services are not identical or sufficiently related, confusion is unlikely.

6. FF's Services are not Offered for Sale in the Same Channels of Trade as Odom's Goods.

FF admits that it has not amended its class of goods to recite a specific channel of trade. While the classes of end users of FF's services and Odom's food products overlap in theory, grocery store services and food products are not identical goods and services. All food products are not sold in grocery stores.

IV. CONCLUSION

For the foregoing reasons, FF requests that Odom's opposition be denied on summary judgment. Odom's opposition is estopped because Odom's failed to object to FF's previously registered derivatives of the Farmer Boy Design. A visual comparison of the Farmer Boy Design and Pilgrim Boy Design dictates that confusion is unlikely if not impossible. In the alternative, if FF's Motion for Summary Judgment is denied, FF requests the Board extend all discovery and trial dates by sixty (60) days from the date of the Board's decision on the Motion for Summary Judgment.

Respectfully submitted,

FF ACQUISITION, L.L.C.

Date: 9-26-08




Scott W. Johnston
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT'S MOTION FOR SUMMARY JUDGMENT was served upon the following attorney of record for Opposer by First Class Mail, postage prepaid, this 26 day of September, 2008:

Marsha G. Gentner
Jacobson Holman PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004



Scott W. Johnston

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Odom's Tennessee Pride Sausage, Inc.,	)	Opposition No. 91182173
)	
Opposer,	)	Mark: Boy Design
)	
v.	)	Serial No.: 77/148,503
)	
FF Acquisition, L.L.C.,	)	Filing Date: April 4, 2007
)	
Applicant.	)	Published: October 2, 2007
)	

DECLARATION OF HEATHER J. KLIEBENSTEIN IN SUPPORT OF APPLICANT'S
MOTION FOR SUMMARY JUDGMENT

1. I am counsel of record for Applicant FF Acquisition, L.L.C. in the captioned matter, and I make this declaration in support of Applicant's Motion for Summary Judgment.

2. Attached hereto as Exhibit A is a true and correct copy of U.S. Trademark Registration No. 1,222,958.

3. Attached hereto as Exhibit B is a true and correct copy of U.S. Trademark Registration No. 1,222,760.

4. Attached hereto as Exhibit C is a true and correct copy of U.S. Trademark Registration No. 1,222,761.

5. Attached hereto as Exhibit D is a true and correct copy of U.S. Trademark Registration No. 1,222,795.

6. Odom's never petitioned to cancel or objected to the registration of U.S. Trademark Registration Nos. 1,222,760, 1,222,761, 1,222,795 even though they were all in use simultaneous with Odom's Pilgrim Boy Design.

7. Attached hereto as Exhibit E is a true and correct copy of U.S. Trademark Serial No. 77/148,503.

8. Attached hereto as Exhibit F are true and correct copies of U.S. Trademark Registration Nos. 0,887,577; 0,885,136; 1,859,824; 2,850,472; 3,019,210; 3,019,156; 3,200,845; 3,200,875; 3,031,104; 1,861,064 and 2,653,431.


9. Attached hereto as Exhibit G is a true and correct copy of a chart of "boy designs" registered with the U.S. Patent and Trademark Office.

10. Attached hereto as Exhibit H is a true and correct copy of a specimen of use filed on April 4, 2007 in connection with Application Serial No. 77/148,503.

11. Attached hereto as Exhibit I is a true and correct copy of a specimen of use filed on August 18, 2005 in connection with U.S. Trademark Registration No. 3,200,875.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Date: 9-26-2008



Heather J. Kliebenstein

Int. Cl.: 42

Prior U.S. Cl.: 101

United States Patent and Trademark Office

Reg. No. 1,222,958

Registered Jan. 4, 1983

SERVICE MARK
Principal Register



Commonwealth Foods, Inc. (Virginia corporation),
d.b.a. Farm Fresh Supermarkets
3487 Inventors Rd.
Norfolk, Va. 23502

For: SUPERMARKET SERVICES, in CLASS
42 (U.S. Cl. 101).

First use Oct. 5, 1977; in commerce Oct. 5, 1977.

Ser. No. 276,062, filed Aug. 28, 1980.

D. J. FINGERET, Examining Attorney

Exhibit A

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,222,760

Registered Jan. 4, 1983

TRADEMARK
Principal Register



Commonwealth Foods, Inc. (Virginia corporation),
d.b.a. Farm Fresh Supermarkets
3487 Inventors Rd.
Norfolk, Va. 23502

For: BACON, in CLASS 29 (U.S. Cl. 46).
First use Apr. 1979; in commerce Apr. 1979.
The descriptive design of the goods in the basket is
hereby disclaimed apart from the mark as shown.

Ser. No. 276,061, filed Aug. 28, 1980.

D. J. FINGERET, Examining Attorney

Exhibit B

Int. Cl.: 29

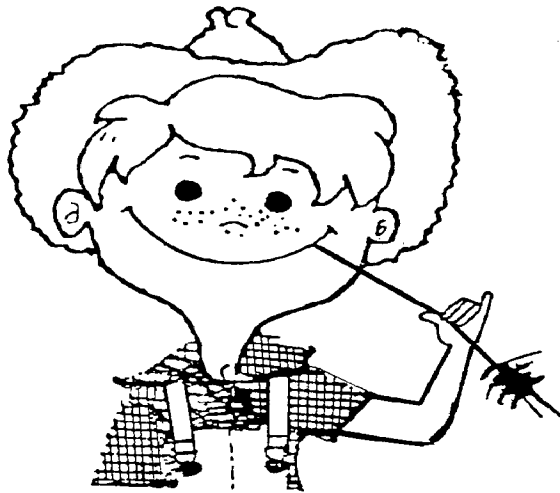
Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,222,761

Registered Jan. 4, 1983

TRADEMARK
Principal Register



Commonwealth Foods, Inc. (Virginia corporation),
d.b.a. Farm Fresh Supermarkets
3487 Inventors Rd.
Norfolk, Va. 23502

For: MARGARINE, in CLASS 29 (U.S. Cl. 46).
First use Jun. 1963; in commerce Jun. 1963.
The lining and/or stippling shown in the mark on
the drawing is a feature of the mark and does not
indicate color.

Ser. No. 276,063, filed Aug. 28, 1980.

D. J. FINGERET, Examining Attorney

Exhibit C

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,222,795

Registered Jan. 4, 1983

TRADEMARK
Principal Register



Commonwealth Foods, Inc. (Virginia corporation),
d.b.a. Farm Fresh Supermarkets
3487 Inventors Rd.
Norfolk, Va. 23502

For: BREAD, in CLASS 30 (U.S. Cl. 46).
First use Mar. 1958; in commerce Mar. 1958.
The descriptive design of the goods in the basket is
hereby disclaimed apart from the mark as shown.

Ser. No. 276,060, filed Aug. 28, 1980.

D. J. FINGERET, Examining Attorney

Exhibit D

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2008-09-25 17:52:23 ET

Serial Number: 77148503 Assignment Information Trademark Document Retrieval

Registration Number: (NOT AVAILABLE)

Mark



Standard Character claim: No

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2008-01-30

Filing Date: 2007-04-04

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 102

Attorney Assigned:
EISINGER REBECCA MILES

Current Location: 650 -Publication And Issue Section

Date In Location: 2007-08-30

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. FF Acquisition, L.L.C.

Address:
FF Acquisition, L.L.C.
4860 Cox Road
Glen Allen, VA 23060
United States

Exhibit E

Legal Entity Type: Limited Liability Company
State or Country Where Organized: Virginia

GOODS AND/OR SERVICES

International Class: 035
Class Status: Active
Retail grocery store services
Basis: 1(a)
First Use Date: 2007-03-28
First Use in Commerce Date: 2007-03-28

ADDITIONAL INFORMATION

Color(s) Claimed: Color is not claimed as a feature of the mark.

Description of Mark: The mark consists of a farmer boy design.

Design Search Code(s):

02.01.18 - Farmers (men); Hobos (men); Men, farmers, hobos and other men wearing overalls; Overalls (men wearing)
02.05.05 - Boys; Children, boy(s)
02.05.07 - Children wearing folk, historical, farm, Indian or cowboy costumes; Costumes, cowboy (children wearing); Costumes, farm (children wearing); Costumes, folk (children wearing); Costumes, historical (children wearing)
02.05.24 - Stylized children, including children depicted in caricature form
05.13.25 - Bales of hay or straw; Hay in bales; Other plants including bales of hay or straw; Straw in bales
09.03.02 - Coveralls; Exercise clothes, shorts; Gym shorts; Jeans; Knickers; Overalls; Pants; Shorts; Slacks; Sweatpants; Trousers
09.05.05 - Sombreros, cowboy hats (10 gallon hats), other broad-brimmed hats

Prior Registration Number(s):
1222958

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-01-30 - Opposition instituted for Proceeding

2007-11-01 - Extension Of Time To Oppose Received

2007-10-02 - Published for opposition

2007-09-12 - Notice of publication

2007-08-30 - Law Office Publication Review Completed

2007-08-30 - Assigned To LIE

2007-07-19 - Approved for Pub - Principal Register (Initial exam)

2007-07-18 - Assigned To Examiner

2007-04-10 - Notice Of Design Search Code Mailed

2007-04-09 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record
Scott W. Johnston

Correspondent
Scott W. Johnston
Merchant & Gould P.C.
P.O. Box 2910
Minneapolis, MN 55402-0910
Phone Number: (612) 332-5300
Fax Number: (612) 332-9081



ODOM'S TENNESSEE PRIDE SAUSAGE,
INC. (TENNESSEE CORPORATION)
P.O. BOX 1187
1201 NEELY'S BEND ROAD
MADISON, TN 371161187, ASSIGNEE OF
ODOM SAUSAGE CO., INC. (TENNESSEE CORPORATION) MADISON, TN

NO CLAIM IS MADE TO THE WORD
"TENNESSEE" APART FROM THE
MARK AS SHOWN.

FOR: SAUSAGE, [HAM, BACON,]
SOUSE [AND LARD], IN CLASS 46 (INT.
CL. 29).

FIRST USE 4-3-1957; IN COMMERCE
6-0-1968.

SER. NO. 72-311,399, FILED 11-5-1968.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on May 8, 1990.*

COMMISSIONER OF PATENTS AND TRADEMARKS



Odom Sausage Co., Inc. (Tennessee corporation)
Route 1
Madison, Tenn. 37115

For: SAUSAGE, HAM, BACON, SOUSE AND
LARD, in CLASS 46 (INT. CL. 29).

First use Apr. 3, 1957; in commerce June 1968; 1943
as to "Odom's Tennessee Pride."

No claim is made to the word "Tennessee" apart from
the mark as shown.

P. P. GRALNICK, Examiner



ODOM'S TENNESSEE PRIDE SAUSAGE,
INC. (TENNESSEE CORPORATION)
P. O. BOX 1187
1201 NEELY'S BEND RD.
MADISON, TN 371161187, ASSIGNEE OF
ODOM SAUSAGE CO., INC. (TENNES-
SEE CORPORATION) MADISON, TN

FOR: SAUSAGE, [HAM, BACON,]
SOUSE [, AND LARD], IN CLASS 46
(INT. CL. 29).

FIRST USE 4-3-1957; IN COMMERCE
6-0-1968.

SER. NO. 72-321,972, FILED 3-17-1969.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on May 8, 1990.*

COMMISSIONER OF PATENTS AND TRADEMARKS



Odom Sausage Co., Inc. (Tennessee corporation)
Route 1
Madison, Tenn. 37115

For: SAUSAGE, HAM, BACON, SOUSE, AND
LARD, in CLASS 46 (INT. CL. 29).
First use Apr. 3, 1957; in commerce June 1968.

A. G. DIETZ, Examiner



ODOM'S TENNESSEE PRIDE SAUSAGE, INC.
(TENNESSEE CORPORATION)
1201 NEELY'S BEND ROAD
P.O. BOX 1187
MADISON, TN 371161187

FOR: SAUSAGE IN ROLL, LINK AND
PATTY FORM; SOUSE; BARBEQUED PORK;
BARBEQUED BEEF; HEAD CHEESE; AND
PREPARED BREAKFAST ENTREES CONSIST-
ING PRIMARILY OF EGGS, SAUSAGE, AND
CHEESE, IN CLASS 29 (U.S. CL. 46).

FIRST USE 12-15-1993; IN COMMERCE
12-15-1993.

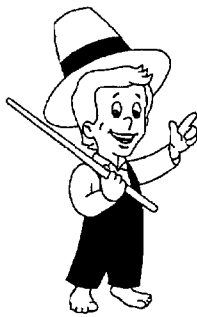
FOR: GRAVY; PREPARED BREAKFAST EN-
TRESSES CONSISTING PRIMARILY OF BISCUIT
SANDWICHES; AND PREPARED BREAKFAST
ENTRESSES CONSISTING PRIMARILY OF BIS-
CUITS AND GRAVY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 12-15-1993; IN COMMERCE
12-15-1993.

OWNER OF U.S. REG. NOS. 885,136 AND
887,577.

SER. NO. 74-399,042, FILED 6-8-1993.

PATRICIA MALESARDI, EXAMINING ATTOR-
NEY



ODOM'S TENNESSEE PRIDE SAUSAGE, INC.
(TENNESSEE CORPORATION)
1201 NEELY'S BEND ROAD
MADISON, TN 37116

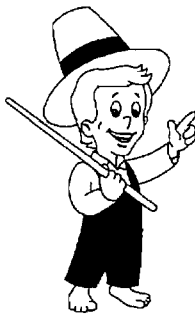
OWNER OF U.S. REG. NOS. 885,136, 1,861,064 AND
OTHERS.

FOR: BREAKFAST SANDWICHES, NAMELY
SAUSAGE AND BISCUIT SANDWICHES, IN CLASS
30 (U.S. CL. 46).

SER. NO. 76-510,799, FILED 4-29-2003.

FIRST USE 11-1-2002; IN COMMERCE 11-1-2002.

DARLENE BULLOCK, EXAMINING ATTORNEY



ODOM'S TENNESSEE PRIDE SAUSAGE, INC.
(TENNESSEE CORPORATION)
1201 NEELY'S BEND ROAD
MADISON, TN 37116

OWNER OF U.S. REG. NOS. 885,136, 1,861,064 AND
OTHERS.

FOR: BREAKFAST SANDWICHES, NAMELY
SAUSAGE AND BISCUIT SANDWICHES, IN CLASS
30 (U.S. CL. 46).

SER. NO. 76-510,799, FILED 4-29-2003.

FIRST USE 11-1-2002; IN COMMERCE 11-1-2002.

DARLENE BULLOCK, EXAMINING ATTORNEY



ODOM'S TENNESSEE PRIDE SAUSAGE, INC.
(TENNESSEE CORPORATION)
1201 NEELY'S BEND ROAD
MADISON, TN 37116

OWNER OF U.S. REG. NOS. 885,136, 2,653,431 AND
OTHERS.

FOR: FROZEN BREAKFAST SANDWICHES, IN
CLASS 30 (U.S. CL. 46).

SER. NO. 76-586,085, FILED 4-12-2004.

FIRST USE 5-0-2002; IN COMMERCE 5-0-2002.

LEIGH LOWRY, EXAMINING ATTORNEY



ODOM'S TENNESSEE PRIDE SAUSAGE, INC.
(TENNESSEE CORPORATION)
1201 NEELY'S BEND ROAD
MADISON, TN 37116

FOR: FRESH SAUSAGE ROLLS, LINKS AND
PATTIES; FRESH SOUSE; FULLY COOKED SAU-
SAGE LINKS AND PATTIES; SAUSAGE BALL AP-
PETIZERS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1943; IN COMMERCE 0-0-1943.

FOR: FROZEN BREAKFAST SANDWICHES;
FROZEN APPETIZERS, NAMELY, SAUSAGE HOT

DOG SANDWICHES, WRAPS AND SWIRLS; AND
GRAVY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1943; IN COMMERCE 0-0-1943.

OWNER OF U.S. REG. NOS. 885,136, 2,653,431 AND
OTHERS.

SER. NO. 76-581,851, FILED 3-18-2004.

LEIGH LOWRY, EXAMINING ATTORNEY



ODOM'S TENNESSEE PRIDE SAUSAGE, INC.
(TENNESSEE CORPORATION)
1201 NEELY'S BEND ROAD
MADISON, TN 37116

FOR: FRESH SAUSAGE ROLLS, LINKS AND
PATTIES; FULLY COOKED SAUSAGE LINKS
AND PATTIES; APPETIZERS CONSISTING PRI-
MARILY OF MEAT, NAMELY, SAUSAGE BALLS,
HOT DOG SANDWICHES, WRAPS AND SWIRLS, IN
CLASS 29 (U.S. CL. 46).

FIRST USE 3-0-2003; IN COMMERCE 3-0-2003.

FOR: FROZEN BREAKFAST SANDWICHES, IN
CLASS 30 (U.S. CL. 46).

FIRST USE 3-0-2003; IN COMMERCE 3-0-2003.

OWNER OF U.S. REG. NOS. 2,850,472, 3,019,210,
AND 3,043,559.

THE NAME(S), PORTRAIT(S), AND/OR SIGNA-
TURE(S) SHOWN IN THE MARK DOES NOT IDEN-
TIFY A PARTICULAR LIVING INDIVIDUAL.

SER. NO. 78-693,129, FILED 8-15-2005.

LINDA ORNDORFF, EXAMINING ATTORNEY

TRADEMARK
PRINCIPAL REGISTER



ODOM'S TENNESSEE PRIDE SAUSAGE,
INC. (TENNESSEE CORPORATION)
1201 NEELY'S BEND ROAD
MADISON, TN 37116

OWNER OF U.S. REG. NOS. 2,850,472
AND 3,019,210.

THE NAME(S), PORTRAIT(S), AND/OR
SIGNATURE(S) SHOWN IN THE MARK
DOES NOT IDENTIFY A PARTICULAR
LIVING INDIVIDUAL.

FOR: FRESH SAUSAGE ROLLS,
LINKS AND PATTIES; FULLY COOKED
SAUSAGE LINKS AND PATTIES; APPE-
TIZERS CONSISTING PRIMARILY OF
MEAT, NAMELY, SAUSAGE BALLS,
HOT DOG SANDWICHES, WRAPS AND
SWIRLS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 3-0-2003; IN COMMERCE
3-0-2003.

FOR: FROZEN BREAKFAST SAND-
WICHES; GRAVY, IN CLASS 30 (U.S.
CL. 46).

FIRST USE 3-0-2003; IN COMMERCE
3-0-2003.

SER. NO. 78-695,893, FILED 8-18-2005.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on May 22, 2007.*

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE



ODOM'S TENNESSEE PRIDE SAUSAGE, INC.
(TENNESSEE CORPORATION)
1201 NEELEY'S BEND ROAD
MADISON, TN 37116

FOR: FRESH SAUSAGE ROLLS, LINKS AND
PATTIES; FULLY COOKED SAUSAGE LINKS
AND PATTIES; APPETIZERS CONSISTING PRI-
MARILY OF MEAT, NAMELY, SAUSAGE BALLS,
HOT DOG SANDWICHES, WRAPS AND SWIRLS, IN
CLASS 29 (U.S. CL. 46).

FIRST USE 3-0-2003; IN COMMERCE 3-0-2003.

FOR: FROZEN BREAKFAST SANDWICHES;
GRAVY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-0-2003; IN COMMERCE 3-0-2003.

OWNER OF U.S. REG. NOS. 2,850,472 AND
3,019,210.

THE NAME(S), PORTRAIT(S), AND/OR SIGNA-
TURE(S) SHOWN IN THE MARK DOES NOT IDEN-
TIFY A PARTICULAR LIVING INDIVIDUAL.

SER. NO. 78-695,893, FILED 8-18-2005.

LINDA ORNDORFF, EXAMINING ATTORNEY



ODOM'S TENNESSEE PRIDE SAUSAGE, INC.
(TENNESSEE CORPORATION)
1201 NEELY'S BEND ROAD
MADISON, TN 37116

FOR: FRESH SAUSAGE ROLLS, LINKS AND
PATTIES; FRESH SOUSE; FULLY COOKED SAU-
SAGE LINKS AND PATTIES; SAUSAGE BALL AP-
PETIZERS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1943; IN COMMERCE 0-0-1943.

FOR: FROZEN BREAKFAST SANDWICHES;
FROZEN APPETIZERS, NAMELY SAUSAGE HOT

DOG SANDWICHES, WRAPS AND SWIRLS; AND
GRAVY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1943; IN COMMERCE 0-0-1943.

OWNER OF U.S. REG. NOS. 887,577, 2,653,431 AND
OTHERS.

SEC. 2(F) AS TO "TENNESSEE".

SER. NO. 76-581,897, FILED 3-18-2004.

ANDREA SAUNDERS, EXAMINING ATTORNEY



ODOM'S TENNESSEE PRIDE SAUSAGE, INC.
(TENNESSEE CORPORATION)
1201 NEELY'S BEND ROAD
P.O. BOX 1187
MADISON, TN 371161187

FOR: SAUSAGE IN ROLL, LINK AND
PATTY FORM; SOUSE; BARBEQUED PORK;
BARBEQUED BEEF; HEAD CHEESE; AND
PREPARED BREAKFAST ENTREES CONSIST-
ING PRIMARILY OF EGGS, SAUSAGE, AND
CHEESE, IN CLASS 29 (U.S. CL. 46).

FIRST USE 12-15-1993; IN COMMERCE
12-15-1993.

FOR: GRAVY; PREPARED BREAKFAST EN-
TREES CONSISTING PRIMARILY OF BISCUIT
SANDWICHES; AND PREPARED BREAKFAST
ENTREES CONSISTING PRIMARILY OF BIS-
CUITS AND GRAVY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 12-15-1993; IN COMMERCE
12-15-1993.

OWNER OF U.S. REG. NOS. 885,136 AND
887,577.

SER. NO. 74-399,043, FILED 6-8-1993.

PATRICIA MALESARDI, EXAMINING ATTOR-
NEY



ODOM'S TENNESSEE PRIDE SAUSAGE, INC.
(TENNESSEE CORPORATION)
1201 NEELY'S BEND ROAD
MADISON, TN 37115

FOR: SAUSAGE IN ROLL, LINK AND PATTY
FORM AND SOUSE; PREPARED BREAKFAST EN-
TRESSES CONSISTING PRIMARILY OF EGGS, SAU-
SAGE AND CHEESE, IN CLASS 29 (U.S. CL. 46).

FIRST USE 5-0-1998; IN COMMERCE 5-0-1998.

FOR: PREPARED BREAKFAST ENTRESSES CON-
SISTING PRIMARILY OF BISCUIT SANDWICHES,
PREPARED BREAKFAST ENTRESSES CONSISTING

PRIMARILY OF BISCUITS AND GRAVY, AND
GRAVY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-0-1998; IN COMMERCE 5-0-1998.






OWNER OF U.S. REG. NOS. 885,136, 1,861,064 AND
OTHERS.







NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "TENNESSEE", APART FROM
THE MARK AS SHOWN.









SER. NO. 76-176,607, FILED 12-6-2000.









YVONNE JONES, EXAMINING ATTORNEY

FEDERAL TRADEMARKS




Ref. #	Trademark & Logo	Status/Status Date	Serial/Reg No.	Goods/Services	Owner
Fed 7	Miscellaneous Design 	REGISTERED - Renewed - September 24, 2003	73-276062 1,222,958	42 - Supermarket Services	FF ACQUISITION, L.L.C. (VIRGINIA LTD. LIABILITY CO.), 4860 COX ROAD, GLEN ALLEN, VA 23060
Fed 45	Miscellaneous Design 	OPPOSED - January 30, 2008	77-148503	35 - Retail grocery store services	FF ACQUISITION, L.L.C. (VIRGINIA LTD. LIABILITY CO.) 4860 COX ROAD GLEN ALLEN, VA 23060
Fed 3	ODOM'S TENNESSEE PRIDE (and Design) 	REGISTERED - Renewed - January 12, 2000	72-311399 887,577	29 - SAUSAGE, [HAM, BACON,] SOUSE [AND LARD]	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION), P.O. BOX 1187, 1201 NEELY'S BEND ROAD, MADISON, TN 37115
Fed 4	Miscellaneous Design 	REGISTERED - Renewed - December 7, 1999	72-321972 885,136	29 - SAUSAGE, [HAM, BACON,] SOUSE [, AND LARD]	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION), P. O. BOX 1187, 1201 NEELY'S BEND ROAD, MADISON, TN 37116- 1187
Fed 14	Miscellaneous Design 	REGISTERED - Renewed - September 15, 2004	74-399042 1,859,824	29 - Sausage in roll, link and patty form; souse; barbequed pork; barbequed beef; head cheese; and prepared breakfast entrees consisting primarily of eggs, sausage, and cheese 30 - Gravy; prepared breakfast entrees consisting primarily of biscuit sandwiches; and prepared breakfast entrees consisting primarily of biscuits and gravy	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION) 1201 NEELY'S BEND ROAD P.O. BOX 1187 MADISON, TN 37116-1187
Fed 34	Miscellaneous Design	REGISTERED - June 8, 2004	76-510799 2,850,472	30 - BREAKFAST SANDWICHES, NAMELY SAUSAGE AND BISCUIT SANDWICHES	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION) 1201 NEELY'S BEND ROAD MADISON, TN 37116







					
Fed 40	Miscellaneous Design 	REGISTERED - November 29, 2005	76-586085 3,019,210	30 - FROZEN BREAKFAST SANDWICHES	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION) 1201 NEELY'S BEND ROAD MADISON, TN 37116
Fed 37	Miscellaneous Design 	REGISTERED - November 29, 2005	76-581851 3,019,156	29 - FRESH SAUSAGE ROLLS, LINKS AND PATTIES; FRESH SOUSE; FULLY COOKED SAUSAGE LINKS AND PATTIES; SAUSAGE BALL APPETIZERS 30 - FROZEN BREAKFAST SANDWICHES; FROZEN APPETIZERS, NAMELY, SAUSAGE HOT DOG SANDWICHES, WRAPS AND SWIRLS; AND GRAVY	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION) 1201 NEELY'S BEND ROAD MADISON, TN 37116
Fed 39	Miscellaneous Design 	ALLOWED - Statement of Use, response after non-final action prepared - September 18, 2007	76-581899	29 - Fresh sausage rolls, links and patties; fresh souse; frozen sausage ball appetizers 30 - Frozen appetizers, namely, sausage hot dog sandwiches, wraps and swirls; gravy	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION) 1201 NEELY'S BEND ROAD MADISON, TN 37116
Fed 1	FARMER JOHN (and Design) 	REGISTERED - Renewed - February 11, 1987	71-491232 426,538	29 - MEAT AND MEAT PRODUCTS-NAMELY, BOLOGNA, LIVER SAUSAGE, SALAMI, [LUNCHEON SAUSAGE, PIMIENTO SAUSAGE,] PORK SAUSAGE AND HAM	CLOUGHERTY PACKING, LLC (DELAWARE LTD. LIABILITY CO.), 3049 E. VERNON AVENUE, LOS ANGELES, CA 90058
Fed 2	FARMEKIST (and Design) 	REGISTERED - Renewed - September 18, 1997	72-019158 650,210	29 - DRIED FRUITS	MAYFAIR PACKING COMPANY (CALIFORNIA CORPORATION) 2070 S. 7TH STREET SAN JOSE, CA 95150
Fed 5	PETE'S PRIDE (and Design)	REGISTERED - Renewed - June 2, 1997	73-008986 1,069,891	29 - FROZEN BREADED BEEF FRITTERS, FROZEN BREADED PORK	AL PETE MEATS, INC. (INDIANA CORPORATION) 2100 E. WILLARD ST.



				FRITTERS AND FROZEN BREADED VEAL FRITTERS	MUNCIE, IN 47302
Fed 6	Miscellaneous Design 	REGISTERED - Renewed - February 14, 2002	73-276030 1,182,561	42 - Retail Supermarket Services	BORMAN'S, INC. (DELAWARE CORPORATION) 18718 BORMAN AVE. DETROIT, MI 48228
Fed 8	JOE O'MALIA FOOD MARKETS "WHERE QUALITY IS THE TRUE VALUE OF ECONOMY" (and Design) 	REGISTERED - Renewed - October 24, 2003	73-327350 1,223,759	42 - Grocery Store Services	MARSH SUPERMARKETS, LLC (DELAWARE LTD. LIABILITY CO.), 9800 CROSSPOINT BLVD., INDIANAPOLIS, IN 46256
Fed 9	LIL' DUDE'S (and Design) 	REGISTERED - January 12, 1995	73-716764 1,508,428	29 - FOOD PRODUCTS, NAMELY, BEEF AND PORK SAUSAGES	SPARRER SAUSAGE CO., INC. (ILLINOIS CORPORATION) 4325 W. OGDEN AVENUE CHICAGO, IL 60623
Fed 10	SWEET TASTE OF TEXAS (and Design) 	REGISTERED - Renewed - June 15, 2000	73-748267 1,568,661	30 - FOOD ITEMS, NAMELY CANDIES, CANDIED NUTS, AND CANDIED APPLES	SWEET TASTE OF TEXAS (TEXAS CORPORATION) 1155 BRITTMORE, SUITE C HOUSTON, TX 77043
Fed 11	RK (and Design) 	REGISTERED - Renewed - October 4, 2002	74-182848 1,728,674	30 - Barbecue sauce	LEGACY FOODS LLC (KANSAS LIMITED LIABILITY COMPANY), 2701 EAST 11TH STREET, P.O. BOX 1099, HUTCHINSON, KS 67504
Fed 12	Miscellaneous Design 	REGISTERED - Renewed - January 2, 2004	74-364018 1,799,562	30 - Tortilla shells, tortillas, tamales and burritos	RESER'S FINE FOODS, INC. (OREGON COMPANY), 15570 S.W. JENKINS ROAD, BEAVERTON, OR 97006
Fed 13	POZO PETE (and Design) 	REGISTERED - Renewed - April 16, 2004	74-378363 1,825,304	29 - Beef jerky, turkey jerky, smoked and cured meats; namely, sausage, bacon, ham, beef and turkey	CATTANEO BROS. INC. (CALIFORNIA CORPORATION) 769 CAUDILL STREET SAN LUIS OBISPO, CA 93401
Fed 15	ODOM'S TENNESSEE PRIDE (and Design)	REGISTERED - Renewed -	74-399043 1,861,064	29 - Sausage in roll, link and patty form; soused; barbecued	ODOM'S TENNESSEE PRIDE SAUSAGE, INC.


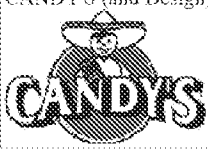



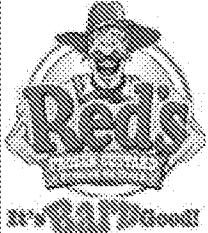

		November 5, 2004		pork; barbequed beef, head cheese;] and prepared breakfast entrees consisting primarily of eggs, sausage, and cheese 30 - Gravy; prepared breakfast entrees consisting primarily of biscuit sandwiches; and prepared breakfast entrees consisting primarily of biscuits and gravy	(TENNESSEE CORPORATION) 1201 NEELY'S BEND ROAD PO BOX 1187 MADISON, TN 37116-118
Fed 16	Miscellaneous Design 	REGISTERED - Renewed - January 18, 2005	74-463608 1,875,436	30 - Breakfast cereal, cereal based snack food and ready to eat cereal derived food bars	CERAL WEST, LLC (LIMITED PARTNERSHIP), P.O. BOX 2909, 1612 E. 101 SE, HARLOWTON, MT 59036
Fed 17	Miscellaneous Design 	REGISTERED - Renewed - January 18, 2005	74-463610 1,871,475	30 - Breakfast cereals, cereal based snack food, and cereal derived snack bars	CEREAL WEST, LLC (LIMITED PARTNERSHIP), P.O. BOX 2909, 1612 E. 101 SE, HARLOWTON, MT 59036
Fed 18	Miscellaneous Design 	REGISTERED - Renewed - April 6, 2005	74-485281 1,905,203	1 - [soil products, namely potting soils and professional growing media] 31 - [mulches,] live plants, live plant cuttings, live plant plugs, live annuals, live perennial flowers, live bedding plants, live hanging plants, [and soil products, namely soilless topsoil mixtures and mineral topsoils]	JOLLY FARMER PRODUCTS, INC. (CANADA CORPORATION), 56 CRABBE ROAD, NORTHAMPTON, NEW BRUNSWICK E7N 1R6, Canada
Fed 19	Miscellaneous Design 	REGISTERED - March 7, 2005	75-310809 2,216,746	29 - Salt pork, ham and bacon	TYSON REFRIGERATED PROCESSED MEATS, INC. (DELAWARE CORPORATION), 2210 W. OAKLAWN DR., AR058124, SPRINGDALE, AR 72762
Fed 20	Miscellaneous Design 	REGISTERED - May 24, 2004	75-311763 2,162,135	31 - Fresh citrus fruit, fresh specialty fruit, namely, cherries, plums, nectarines, peaches, pears and apples, fresh vegetables, namely, tomatoes and vidalia onions, shelled pecans	APCS, INC., DBA AL'S FAMILY FARMS (FLORIDA CORPORATION) P.O. BOX 650808 VERO BEACH, FL 32965
Fed 21	Miscellaneous Design 	REGISTERED - June 22, 2004	75-513388 2,230,977	32 - OLIVE JUICE, AND FRUIT AND VEGETABLE JUICES	ALL AMERICAN TRADING OF HOUSTON (TEXAS CORPORATION) 6622 SUPPLY ROW HOUSTON, TX 77011
Fed 22	SMOKIN' JOE'S SMOKEHOUSE AND DESIGN (and Design) 	REGISTERED - November 12, 2002	75-912458 2,647,861	29 - Meats including smoked meats	MELMAR CONCESSIONS, INC. (MINNESOTA CORPORATION) 9427 JANE CT. N. LAKE ELMO, MN 55042







Fed 23	DON FRANCISCO'S (and Design) 	REGISTERED - November 21, 2007	75-913187 2,503,047	30 - Coffee	F. GAVINA & SONS, INC. (CALIFORNIA CORPORATION) 2700 FRUITLAND AVENUE VERNON, CA 90058
Fed 24	Miscellaneous Design 	REGISTERED - June 18, 2007	76-039612 2,542,419	31 - FRESH FRUITS AND VEGETABLES	JOLLY FARMER PRODUCTS, INC. (CANADA CORPORATION) 56 CRABBE ROAD NORTHAMPTON, NEW BRUNSWICK E7N 1R6 CANADA
Fed 25	ODOM'S TENNESSEE PRIDE (and Design) 	REGISTERED - November 26, 2002	76-176607 2,653,431	29 - Sausage in roll, link and patty form and souce; prepared breakfast entrees consisting primarily of eggs, sausage and cheese 30 - Prepared breakfast entrees consisting primarily of biscuit sandwiches, prepared breakfast entrees consisting primarily of biscuits and gravy, and gravy	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION) 1201 NEELY'S BEND ROAD MADISON, TN 37115
Fed 26	Miscellaneous Design 	REGISTERED - September 14, 2004	76-281143 2,883,508	29 - Orpheus olive oil, Orpheus linseed oil, Orpheus sesame oil, Orpheus sunflower oil, Orpheus carthame oil, Flo Viridis oil; meat; corn-fed chicken broth; broth, namely, meat and vegetable broth; dried tomatoes; tomato puree; processed food products, namely, hulled sunflower seeds, hulled sesame seeds; raisins; dried fruit, namely, pitted prunes; natural figs; date squares; apricots, nuts, namely, pistachios, walnuts, Sillician almonds and hazelnuts; vegetables, namely, vegetable mix 30 - Sauces, namely, tamari sauce; honey, namely, creamy honey; vinegar, namely, apple cider vinegar; rice, namely, basmati brown rice, basmati white rice and wild rice; hulled millet; hulled barley; maple syrup; coffee, namely, Mystique decaffeinated coffee, early morning regular coffee; salt, namely, sea salt and flower salt; mustard, namely Dijon mustard and old fashioned mustard; couscous; muesli, namely, sugar free muesli and triple fruit muesli; chocolate, namely, chocolate spread; cocoa; mixes for bakery goods, namely, Provence mix; pepper, namely	GESTION PREMIERE MOISSON INC. (CANADA CORPORATION) 189 BOUL. HARWOOD VAUDREUIL- DORION, QUEBEC J7V 1Y3 Canada







				ground black pepper; tea, namely, chamomile and verbena tea; bread; cakes and pies	
Fed 27	Miscellaneous Design 	REGISTERED - November 19, 2002	76-342897 2,651,793	29 - Processed Seaweed, Dried Seaweed, Sweet Potato Stems, Taro Stems, Salted Seaweed Stems, Preserved Vegetable, Pickled Vegetables, Pickled Radishes, Dried Vegetables, Dried Radishes, Dried Mushrooms Dried Red Pepper, Brains in packages for Consumer Sale, Processed Soybeans, Processed Beans, Processed Chestnuts, Imitation Crab Sticks, Processed Crab, Seafood in Brine Salted Shrimp, Frozen Seafood, Frozen Sand Eels, Frozen Mussels, Frozen Anchovies, Frozen Octopus, Dried Seafood, Dried Anchovies, Fish Roe, Pollack Roe, Frozen Beef Blood and Preserved Pears	SEOUL SHIK POOM, INC. (NEW YORK CORPORATION) 31-85 WHITESTONE EXPRESSWAY FLUSHING, NY 11354
Fed 28	CHORIPDONG (and Design)  CHORIPDONG	REGISTERED - November 12, 2002	76-342899 2,649,156	29 - Processed Seaweed, Dried Seaweed, Sweet Potato Stems, Taro Stems, Salted Seaweed Stems, Preserved Vegetable, Pickled Vegetables, Pickled Radishes, Dried Vegetables, Dried Radishes, Dried Mushrooms Dried Red Pepper, Brains in packages for Consumer Sale, Processed Soybeans, Processed Beans, Processed Chestnuts, Imitation Crab Sticks, Processed Crab, Seafood in Brine Salted Shrimp, Frozen Seafood, Frozen Sand Eels, Frozen Mussels, Frozen Anchovies, Frozen Octopus, Dried Seafood, Dried Anchovies, Fish Roe, Pollack Roe, Frozen Beef Blood and Preserved Pears	SEOUL SHIK POOM, INC. (NEW YORK CORPORATION) 31-85 WHITESTONE EXPWY FLUSHING, NY 11354
Fed 29	Miscellaneous Design 	REGISTERED - January 7, 2003	76-378639 2,671,927	29 - Meat, meat extracts, and processed meat products, namely, ham, bacon, pork chops, pork sausage, smoked sausage, meat-based meat toppings, and luncheon meats; prepared meats, namely, hot dogs, hamburgers, and deli meat slices; salads, namely, fruit salads, garden salads, meat salads, cole slaw and potato salad; and prepared salad vegetables	GUNNOE SAUSAGE CO. INC. (VIRGINIA CORPORATION) 3989 CIFAX ROAD GOODE, VA 24556 R. G. GUNNOE FARMS, LLC (WEST VIRGINIA LTD. LIABILITY CO.) 2115 OAKRIDGE DR. CHARLESTON, WV 25311
Fed 30	Miscellaneous Design	REGISTERED - August 12, 2003	76-394326 2,749,664	30 - Coffee, tea, mustard, ketchup, relish, mayonnaise, spices, and seasonings	UNITED INTERTRADE INC. (TEXAS CORPORATION), 1138 BRITTMORE RD., HOUSTON, TX 77043








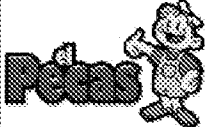
					
Fed 31	Miscellaneous Design 	REGISTERED - May 20, 2003	76-440633 2,717,481	30 - Flour and corn tortillas	MEXICAN ACCENT, INC. (WISCONSIN CORPORATION) 16675 WEST GLENDALE DRIVE NEW BERLIN, WI 53151
Fed 32	Miscellaneous Design 	REGISTERED - July 15, 2003	76-453813 2,736,560	29 - Guacamole 30 - Salsa And Tortilla Chips	SANCHEZ ENTERPRISES, INC. (CALIFORNIA CORPORATION) 53 CAMELLIA AVENUE SAN FRANCISCO, CA 94112
Fed 33	PLUMROSE PREMIUM QUALITY USA (and Design) 	REGISTERED - May 10, 2005	76-459115 2,948,978	29 - MEAT AND MEAT PRODUCTS, NAMELY HAM, PORK, BEEF, CHICKEN and TURKEY	DANISH CROWN AMBA (DENMARK CORPORATION) MARSVEJ 43 DK-8900 RANDERS Denmark
Fed 35	SALAPENO (and Design) 	REGISTERED - August 3, 2004	76-523038 2,868,788	29 - PROCESSED MEATS, NAMELY SAUSAGE AND SALAMI	CIBAO MEAT PRODUCTS, INC. (NEW YORK CORPORATION) 630 ST. ANN'S AVENUE BRONX, NY 10455
Fed 36	COWBOY BLEND (and Design) 	REGISTERED - June 29, 2004	76-528323 2,857,613	30 - Coffee Beans and Ground coffee	FULTON, BETTY J., DBA THE HOME RANCH COMPANY (UNITED STATES INDIVIDUAL) 2504 S. ST. EUREKA, CA 95501
Fed 38	ODOM'S TENNESSEE PRIDE REAL COUNTRY (and Design)	REGISTERED - December 20, 2005	76-581897 3,031,104	29 - FRESH SAUSAGE ROLLS, LINKS AND PATTIES; FRESH SOUSE; FULLY COOKED SAUSAGE LINKS AND	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION) 1201 NEELY'S BEND ROAD






				PATTIES; SAUSAGE BALL APPETIZERS 30 - FROZEN BREAKFAST SANDWICHES; FROZEN APPETIZERS, NAMELY SAUSAGE HOT DOG SANDWICHES, WRAPS AND SWIRLS; AND GRAVY	MADISON, TN 37116
Fed 41	RENEGADE RIDE WITH A VENGEANCE (and Design) 	PENDING - Suspension letter mailed - August 2, 2007	77-023225	6 - Metal key chains 9 - Souvenir magnets 16 - Posters, postcards, pens and pencils, newsletters in the field of amusement parks, photographs; and paper pennants 18 - Umbrellas; all-purpose carrying bags; sports bags; tote bags; paper and plastic shopping bags; back packs; fanny packs; purses; wallets 20 - Non-metal and non- leather key chains, picture frames, picture holders; and plastic pennants 21 - Souvenir sport bottles sold empty, beverage ware and shot glasses 24 - Cloth and felt pennants and towels 25 - Clothing, namely shirts, shorts, sweat shirts, sweat pants, sweat shorts, sweat bands; and headwear, namely hats and caps 26 - Pins, namely ornamental novelty pins and ornamental souvenir cloth patches 28 - Amusement park rides; toys, namely electronic action toys, light up toys, mechanical toys, musical toys, plastic toy figurines, plastic character toys, push toys, pull toys, plush toys, rubber character toys, soft sculpture toys, squeeze toys; Christmas tree ornaments excluding confectionery and illuminated articles; baseballs; toy balls; snow globes; video games 30 - Candy 35 - Retail store services and on-line retail store services, featuring clothing, souvenir items, and other sundries 41 - Amusement park services; providing an online newsletter in the field of amusement parks; and entertainment services, namely providing online video and trivia games 45 - Providing on-line electronic greeting cards	CEDAR FAIR, L.P., COMPOSED OF CEDAR FAIR, L.P. AN OHIO CORPORATION (DELAWARE LIMITED PARTNERSHIP) ONE CEDAR POINT DRIVE SANDUSKY, OH 44870-5259
Fed 42	PEPITO (and Design)	REGISTERED - October 9, 2007	77-118037 3,306,373	30 - Tortillas	GRUMA CORPORATION (NEVADA CORPORATION) SUITE 200 1159 COTTONWOOD LANE

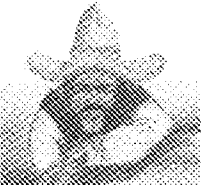



					IRVING, TX 75038
Fed 43	CANDY'S (and Design) 	REGISTERED - October 9, 2007	77-118056 3,306,374	30 - Tortillas	GRUMA CORPORATION (NEVADA CORPORATION) SUITE 200 1159 COTTONWOOD LANE IRVING, TX 75038
Fed 44	QUAKER SIMPLE HARVEST (and Design) 	ALLOWED - Notice of Allowance issued - November 6, 2007	77-124702	30 - Breakfast cereals, cereal- based snacks, grain-based snack foods, cookies, crackers and trail mix consisting primarily of granola	THE QUAKER OATS COMPANY (NEW JERSEY CORPORATION) 555 W. MONROE STREET CHICAGO, IL 60661
Fed 46	AUSSIE BAKERY (and Design) 	PENDING - Final refusal mailed - September 10, 2007	77-161083	30 - Pastries	AUSTRALIAN PIE CO. (WASHINGTON CORPORATION) 425 SW 152ND STREET BURIEN, WA 98166
Fed 47	Miscellaneous Design 	REGISTERED - January 15, 2008	77-161686 3,363,198	30 - TEA; TEA BASED BEVERAGES; BEVERAGES MADE OF TEA; ICED TEA; TEA BASED BEVERAGES WITH HERBAL INGREDIENTS; HERBAL TEA; GREEN TEA	COOPER, BARRY P. W. (UNITED STATES INDIVIDUAL) 408 S. PIERCE AVENUE LOUISVILLE, CO 80027
Fed 48	RED'S FROZEN CUSTARD - PREMIUM ICE CREAM - IT'S BARN GOOD! (and Design) 	PENDING - Non-final action mailed - September 28, 2007	77-216322	30 - Frozen confections	RED'S FROZEN CUSTARD, INC. (NEW JERSEY CORPORATION) 710 10TH AVENUE BELMAR, NJ 07719
Fed 49	Miscellaneous Design 	PUBLISHED - Published for Opposition - January 1, 2008	77-295001	32 - Fruit juices; beer; sweet cider; non-alcoholic concentrates, syrups or powders used in the preparation of soft drinks and alcoholic cocktails; drinking water; flavored waters; fruit drinks; fruit juice concentrates; lemonade; mineral water; non- alcoholic cocktail mixes; non- alcoholic fruit extracts used in the preparation of beverages;	PANAMA JACK INTERNATIONAL, INC. (FLORIDA CORPORATION) 230 ERNESTINE STREET ORLANDO, FL 32801

				quinine water; seltzer water; smoothies; soda water; carbonated and non-carbonated soft drinks; sports drinks; and spring water	
Fed 50	Miscellaneous Design 	PENDING - Initialized, not assigned to Examiner - November 6, 2007	77-320525	30 - Spices; Seasonings	EL GAUCHO SEATTLE, LLC (WASHINGTON LTD. LIABILITY CO.) SUITE 401 10 HARRISON STREET SEATTLE, WA 98109
Fed 51	Miscellaneous Design 	REGISTERED - November 29, 2005	78-067710 3,019,537	29 - Processed meats, namely, pork, beef and poultry	SARA LEE CORPORATION (CORPORATION) 1000 E. HANES MILL RD. LAW DEPARTMENT WINSTON SALEM, NC 27105
Fed 52	JIMMY DEAN QUALITY GUARANTEE (and Design) 	REGISTERED - August 10, 2004	78-067717 2,871,377	29 - Processed meats, namely, pork, beef and poultry	SARA LEE FOODS, LLC (DELAWARE LTD. LIABILITY CO.), 11370 REED HARTMAN HWY, BLUE ASH, OH 45241
Fed 53	PEANOTZ DELECTABLY ROASTED SOY NUT SNACKZ (and Design) 	REGISTERED - April 13, 2004	78-186293 2,833,319	29 - Processed soy beans for human consumption	PEANOTZ, INC. (SOUTH DAKOTA CORPORATION) 41178 193RD STREET CARPENTER, SD 57322
Fed 54	LOS GAUCHITOS (and Design) 	REGISTERED - March 2, 2004	78-220912 2,819,889	35 - Retail bakery shops and supermarket services 43 - Restaurant and delicatessens services	LOS GAUCHITOS, INC. (FLORIDA CORPORATION) 4315 N.W. 7TH STREET MIAMI, FL 33126
Fed 55	SADLER'S SMOKEHOUSE (and Design) 	REGISTERED - July 19, 2005	78-267129 2,969,868	29 - Prepared entrees consisting primarily of meat and poultry	SADLER'S BAR-B-QUE SALES, LTD., COMPOSED OF SADLER'S MANAGEMENT COMPANY, LLC, A TEXAS LIMITED LIABILITY COMPANY (TEXAS LIMITED PARTNERSHIP) 1206 N. FRISCO HENDERSON, TX

					75652
Fed 56	Miscellaneous Design 	REGISTERED - August 17, 2004	78-269618 2,874,722	35 - GROCERY STORE SERVICES	BORMAN'S, INC. (DELAWARE CORPORATION) 18718 BORMAN AVENUE DETROIT, MI 48228
Fed 57	PILGRIM'S PRIDE BO PILGRIM (and Design) 	REGISTERED - January 18, 2005	78-295310 2,918,933	29 - Poultry, namely, fresh packaged and frozen chicken and turkey; fresh eggs, salads except macaroni, pasta and rice salads; prepared meals having poultry as their base	PPC MARKETING, LTD., COMPOSED OF PILGRIM'S PRIDE CORPORATION (A DELAWARE CORPORATION), GENERAL PARTNER, AND PPC OF DELAWARE BUSINESS TRUST (A DELAWARE BUSINESS TRUST), LIMITED PARTNER (TEXAS LIMITED PARTNERSHIP) 110 S. TEXAS STREET P.O. BOX 93 PITTSBURGH, TX 75686-0093
Fed 58	DFWGROCER.COM (and Design) 	REGISTERED - April 26, 2005	78-389833 2,943,864	39 - Grocery store delivery services, namely, delivery of prepared food, produce, meat, groceries, and merchandise, namely, household goods, clothing, dry cleaning, music, publications, office and school supplies, beverages, personal care, health and beauty goods, and other grocery items	DFWGROCER.COM, INC. (TEXAS CORPORATION) 18383 PRESTON ROAD, SUITE 202 DALLAS, TX 75252-5487
Fed 59	KILLIAN KORN (and Design) 	REGISTERED - January 10, 2006	78-424606 3,040,472	30 - Popcorn confection products, namely, caramel popcorn, white chocolate popcorn, and peanut and pecan brittle	KILLIAN KORN, INC. (WASHINGTON CORPORATION) 1615 CATALPA ST. OTHELLO, WA 99344
Fed 60	OPB ISBRANDTSEN (and Design) 	REGISTERED - May 16, 2006	78-431345 3,092,275	30 - Coffee, coffee beans, tea, herbal tea, iced tea, chocolate syrup	ISBRANDTSEN COMPANY, INC. (NEW YORK CORPORATION) P.O. BOX 616 BRIGHTWATERS, NY 11718-0616
Fed 61	UNCLE GIUSEPPES' ITALIAN MARKET (and Design) 	REGISTERED - July 19, 2005	78-431840 2,970,582	35 - Retail grocery store services 43 - Catering services	EAST MEADOW CORPORATION (NEW YORK CORPORATION) 2330 HEMPSTEAD TURNPIKE EAST MEADOW, NY 11554
Fed 62	Miscellaneous Design	REGISTERED - November 22, 2005	78-439303 3,017,573	29 - Pickles 30 - Sauces; snack mix consisting primarily of sesame sticks, crackers, and processed seeds and nuts	JUSTIN WILSON HOLDINGS, INC. (LOUISIANA CORPORATION) P.O. BOX 40446 BATON ROUGE, LA 70814

					
Fed 63	Miscellaneous Design 	REGISTERED - December 27, 2005	78-458156 3,034,848	31 - Any combination of fresh fruits, fresh vegetables, live flowers, live flowering potted plants, and living potted plants that are sold at roadside locations 41 - Entertainment services, namely conducting community festivals featuring agriculture-theme rides, play areas for children, demonstrations of farm equipment, and animal exhibitions	COX FARMS-VIENNA, INC. (VIRGINIA CORPORATION) 15621 BRADDOCK RD CENTREVILLE, VA 20120
Fed 64	Miscellaneous Design 	REGISTERED - December 27, 2005	78-547916 3,035,796	31 - Fresh potatoes	TRANS GLOBAL FOODS, INC. (NEVADA CORPORATION) ONE POTATO PLACE WINNEMUCCA, NV 89445
Fed 65	Miscellaneous Design 	REGISTERED - September 5, 2006	78-561387 3,140,388	29 - Potato-based snack foods	KILANG MAKANAN MAMEE SDN BHD (MALAYSIA CORPORATION) LOT 1, AIR KEROH INDUSTRIAL ESTATE MELAKA 75450 Malaysia
Fed 66	EL RANCHO (and Design) 	REGISTERED - May 9, 2006	78-567351 3,089,750	35 - Retail grocery stores	SUPERMERCADO EL RANCHO (TEXAS CORPORATION) 8615 IRVINGTON BLVD. HOUSTON, TX 77022
Fed 67	Miscellaneous Design 	REGISTERED - May 23, 2006	78-570086 3,096,867	29 - Meat, namely, luncheon meats, hot dogs and bacon	HISPANIC FOODS HOLDINGS, LLC (DELAWARE LTD. LIABILITY CO.), 11929 WOODRUFF AVENUE, DOWNEY, CA 90241
Fed 68	RED'S (and Design) 	ALLOWED - Statement of Use, non-final refusal mailed - November 9, 2007	78-577723	29 - Jellies	TIMOTHY, ANN MARIE (UNITED STATES INDIVIDUAL) 37950 EAST BENTON ROAD TEMECULA, CA 92592 TIMOTHY, WILLIAM PAUL (UNITED STATES INDIVIDUAL) 37950 EAST BENTON ROAD TEMECULA, CA 92592
Fed 69	EL PECAS (and Design) 	REGISTERED - September 12, 2006	78-621835 3,141,464	30 - Candy	CASAS, PABLO PEREZ (MEXICO INDIVIDUAL) 677 ANITA STREET SUITE H CHULA VISTA, CA 91911

Fed 70	FOOD RANGER (and Design) 	REGISTERED - October 16, 2007	78-679592 3,313,805	29 - Hot dogs, sausages, and potato chips 30 - Corn chips	RADER, GEORGE (UNITED STATES INDIVIDUAL) 5458 FULTON DRIVE, N.W. CANTON, OH 44718
Fed 71	TASTE THE PRIDE! (and Design) 	REGISTERED - January 23, 2007	78-693129 3,200,845	29 - Fresh sausage rolls, links and patties; fully cooked sausage links and patties; appetizers consisting primarily of meat, namely, sausage balls, hot dog sandwiches, wraps and swirls 30 - Frozen breakfast sandwiches	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION) 1201 NEELY'S BEND ROAD MADISON, TN 37116
Fed 72	KIDS LOVE 'EM! (and Design) 	REGISTERED - January 23, 2007	78-695893 3,200,875	29 - Fresh sausage rolls, links and patties; fully cooked sausage links and patties; appetizers consisting primarily of meat, namely, sausage balls, hot dog sandwiches, wraps and swirls 30 - Frozen breakfast sandwiches; gravy	ODOM'S TENNESSEE PRIDE SAUSAGE, INC. (TENNESSEE CORPORATION) 1201 NEELY'S BEND ROAD MADISON, TN 37116
Fed 74	Miscellaneous Design 	REGISTERED - October 3, 2006	78-757166 3,151,094	30 - Bread, Bread rolls, Bakery products, Bakery desserts, Muffins	WHOLE FOODS MARKET IP, L.P., COMPOSED OF WFM IP MANAGEMENT, INC. (A DELAWARE CORPORATION) (DELAWARE LIMITED PARTNERSHIP) 6TH FLOOR 550 BOWIE STREET AUSTIN, TX 78703
Fed 75	Miscellaneous Design 	REGISTERED - October 3, 2006	78-757175 3,151,096	35 - Retail grocery store services and retail bakery store services	WHOLE FOODS MARKET IP, L.P., COMPOSED OF WFM IP MANAGEMENT, INC. (A DELAWARE CORPORATION) (DELAWARE LIMITED PARTNERSHIP) 550 BOWIE STREET 6TH FLOOR AUSTIN, TX 78703
Fed 76	Miscellaneous Design	ALLOWED - Notice of Allowance	78-862765	16 - Advertising signs of paper or cardboard; Gift cards; Paper sign holders; Plastic or paper	EL FAMOUS RESTAURANTS, INC. (ILLINOIS CORPORATION)

		issued - October 9, 2007		bags for merchandise packaging; Pre-paid telephone calling cards, not magnetically encoded; Printed menus; Printed paper signs; Printed products, namely, menu boards 25 - Caps; Hats; Shirts; T-shirts 32 - Spring water 35 - (Based on Intent to Use) Franchise services, namely, offering technical and business management assistance in the establishment and operation of restaurants and carry out restaurants; Issuing gift certificates which may then be redeemed for goods or services 43 - Carry-out restaurants; Restaurant services; Take-out restaurant services	6159 SOUTH ARCHER ROAD SUMMIT, IL 60501
Fed 77	DOÑA DOMINGA CHILEAN "HUASO" DANCE CS VINA CASA SILVA COLCHAGUA VALLEY (and Design) 	PUBLISHED - Published for Opposition - November 13, 2007	78-895902	33 - Wine	VINA CASA SILVA S.A. (CHILE CORPORATION) HJUELA NORTE ANGOSTURA S/N CASILLA 97 SAN FERNANDO Chile
Fed 78	Miscellaneous Design 	REGISTERED - December 11, 2007	78-906857 3,354,292	30 - Coffee, roasted coffee beans, coffee based beverages containing milk, ground coffee beans, beverages made of coffee 43 - Coffee Shop Services	QUAKER COFFEE COMPANY, INC. (DELAWARE CORPORATION) 75 EAST WYNNEWOOD RD WYNNEWOOD, PA 19096
Fed 79	QUAKER MINI DELIGHTS (and Design) 	PUBLISHED - Published for Opposition - January 30, 2008	78-917579	30 - Grain-based snack foods, namely rice and/or corn and/or wheat based snack cakes.	THE QUAKER OATS COMPANY (NEW JERSEY CORPORATION) SUITE 11-10 555 WEST MONROE STREET CHICAGO, IL 60661
Fed 80	BUSTER BROWN (and Design)	ALLOWED - Notice of Allowance issued - October 23, 2007	78-919614	3 - Lipstick, hair and body shampoo, skin soap, bubble bath, decorative body glitter, makeup, skin and hair lotions, beauty masks, shoe polish 5 - Adhesive bandages for skin wounds, vitamin and mineral supplements 9 - Photographic cameras and	BROWN SHOE COMPANY, INC. (NEW YORK CORPORATION) 8300 MARYLAND AVENUE ST. LOUIS, MO 63105



the like, namely digital cameras, motion picture film cameras, film cameras, telephones, computer mouse pads, computer game software, interactive video game software featuring virtual reality themes, phonographic records featuring children's music and themes, flash lamps for photographic purposes, compact disc players, video cassette recorders, video cameras, audio tape players, television sets, helmets for skating, baseball, football and hockey, decorative magnets, sunglasses, electronic calculators and compact disk holder

11 - Lamps, flashlights, bathroom enclosures, namely bathtub enclosures and shower enclosures, toilet seats

12 - Bicycles, bicycle handle bar grips, bicycle saddles and saddle covers, and water rafts

16 - Trading cards, comic books, coloring books, calendars, date books, greeting cards, paper gift wraps, paper tags, namely paper identification tags, paper labeling tags and paper gift tags, children's activity books, stationery, stickers, magnetic boards, temporary tattoos, paper placemats, stationery folders, notebooks, memo pads, memo pads in the shape of a cube, student assignment books, namely, paper notebooks for writing down student assignments, personal and desktop organizers, markers for use on paper, crayons, pencils, pens, highlighting pens or highlighting markers, pen and pencil boxes, pen and pencil holders, pen and pencil cases, erasers, drafting rulers or drawing rulers, pencil sharpeners, adhesive tape dispensers, cork boards, dry erase writing boards, stamp sets, namely, rubber stamps and stamp pads, diaries, address books, photograph albums, coin holders, paper party decorations, children's books

18 - Leather for making boots, briefcases, all-purpose sport bags, imitation leather sold in bulk, purses, suitcases, luggage tags, backpacks, tote bags, duffel bags, diaper bags, wallets, waist packs, hat boxes

				<p>for travel not of paper or cardboard, steamer trunks, luggage, and umbrellas</p> <p>20 - Mirrors, furniture, picture frames not of precious metal, kennels, plastic and wood statues and figurines, commercial shoe display stands, plastic tool boxes, sleeping bags, locker mirrors, chests, namely, lockers and jewelry boxes not of metal, keepsake boxes of plastic, nonmetal and nonleather key chains</p> <p>21 - Cups, soap dishes, dinnerware, plates, saucers, mugs, combs, hair brushes, shoe brushes, china and earthenware statues and figurines, cookie jars, containers for household and kitchen use not of precious metal, insulated containers for food and beverages, soap dispensers, candy dispensers, toothbrushes, canteens, lunch boxes, soft lunch kits, namely, lunch containers made of plastic cloth, training mugs, and water bottles</p> <p>24 - Textile napkins, textile table place mats, shower curtains, bath linens and plastic placemats</p> <p>25 - Clothing, namely, Halloween and masquerade costumes, swimwear, footwear</p> <p>28 - Toys, namely, bathtub toys, children's multiple activity toys, construction toys, drawing toys, balloons, beach balls, sport balls, children's play houses, doll costumes, children's play tents, face masks, namely, catchers masks, kendo masks, fencing masks and face masks for hockey, boxing, football, plush animal toys, dolls, kites, recreational swimming aids, namely, arm floats and pool rings, inline skates, ice skates, roller skates, stuffed toys, board games, dolls, puppets, Christmas tree ornaments not including confectionary or illumination articles, and knee and elbow guards for athletic use, paper dolls</p> <p>30 - Frozen confections and candy</p>	
Fed 81	JOE'S TASTY TRAVELS (and Design)	PENDING - Suspension inquiry mailed - January 18, 2008	78-925445	<p>29 - Dairy based beverages; edible nuts, namely, candied nuts, shelled nuts, roasted nuts and processed nuts; processed salted, unsalted and flavored nuts; processed edible seeds; processed pumpkin and</p>	DOWNRIGHT HEALTHY FOODS L.P., COMPOSED OF TOURMALINE GENERAL PARTNER INC., A CANADIAN CORPORATION (CANADA LIMITED PARTNERSHIP) 555





sunflower seeds; dried fruit, dried fruit mixes, dried fruit and nut mixes, and fruit chips; trail mixes containing dried fruits, seeds and nuts; preserved fruits; sugared fruits, namely, crystallized fruit and candied fruits; dried prunes, dates, raisins and coconut; glazed fruits, glazed cherries, jams and jellies; soup mixes; condiments, namely, pepper oil, sauces, namely, cranberry sauce; spreads, namely, cheese spreads, fruit-based spreads, vegetable-based spreads, meat-based spreads, garlic-based spreads, hummus; dips, namely, bean dip, dairy-based dip, and snack dip; snack foods, namely, potato chips; baking goods, namely, fruit-based fillings for cakes and pies; unflavored and unsweetened gelatins; frozen entrees consisting primarily of meat, fish, poultry or vegetables; frozen vegetarian entrees; frozen fruits and vegetables; edible oils for human consumption; lentils; pulses; pickled fruits and vegetables; peanut butter and nut butters; soy-based foods, namely, soy-based chips, soy-based food bars, soy-based snack food

30 - Tea-based beverages with fruit flavoring; coffee, coffee beans; coffee, espresso and cappuccino mixes containing coffee powder; loose and bagged black, green and herbal teas; chocolate covered nuts; confectionery, namely, chocolate and candy; spices and seasonings; condiments, namely, pepper sauce, ketchup, mustard, mayonnaise, relish; sauces, namely, chili sauce, hot sauce, dipping sauces, barbeque sauces, pizza sauce, fish sauce, tomato sauce, teriyaki sauce, soy sauce, tamari sauce, tartar sauce, steak sauce, and ready-made sauces; vinegar, salsa; uncooked pasta and noodles, including egg noodles; salad dressings, oil based salad dressings; spreads, namely, cocoa spreads and spreads containing chocolate and nuts; snack foods, namely, puffed corn snacks, sesame sticks, crackers, wafers, cheese flavored puffs, corn-based snacks, pretzels, cookies, biscuits, tortilla chips and corn



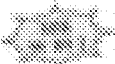

STEEPROCK DRIVE
TORONTO M5H 3Y2 Canada

				<p>chips; croutons; baking goods, namely, cake mixes, muffin mixes, brownie mixes, pastry mixes, chocolate chips, peanut butter confectionery chips, candy mints, baking powder, baking soda, crust mixes for pies, fruit jelly powders, graham cracker crumbs, corn starch, vanilla extract used as a flavoring, yeast, cocoa powder, flours, and white, brown and raw sugar and sugar substitutes; baking goods, namely, candy cake decorations; syrups, namely, corn syrups, maple syrups, pancake syrups, table syrups, topping syrups, molasses, flavoring syrups, chocolate syrups; extracts, namely, natural and artificial extracts used as a flavoring; flavored and sweetened gelatins; marshmallows; popped and popping corn of various flavors, microwaveable popcorn, seasonings for popcorn; frozen entrees consisting primarily of pasta or rice; processed grains; processed cereals; rolled oats and oatmeal; wheat germ; rice; peanut brittle; honey; bread crumbs and graham crumbs</p> <p>31 - Edible nuts, namely, fresh nuts, raw nuts and unprocessed nuts; unprocessed edible seeds; Fresh salted, unsalted and flavored nuts; unprocessed grains; unprocessed cereals</p> <p>32 - Non-alcoholic beverages, namely, carbonated beverages, beverages containing fruit juice, low calorie soft drinks, non-alcoholic beverages with tea flavor, fruit juices, fruit drinks, vegetable juices, vegetable drinks, fruit and vegetable juices, fruit and vegetable drinks; beverage powders and crystals, namely, used in the preparation of fruit drinks; colas; sodas in the nature of soda water, and flavored soda water; carbonated and non-carbonated soft drinks; syrups, namely, syrups for making beverages; soy-based beverages not being milk substitutes</p>	
Fed 82	BEANS (and Design)	REGISTERED - December 25, 2007	78-963775 3,359,835	29 - Dried beans	FARMER BEAN & SEED, LLC (WASHINGTON LTD. LIABILITY CO.) P.O. BOX 455 QUINCY, WA 98848

					
Fed 83	GOLDEN CHAMP (and Design) 	REGISTERED - March 20, 2007	79-013227 3,220,243	29 - Preparations made wholly or principally of bean curd, namely, dried bean curd sticks and dried bean curd sheets; dried beans; processed soy beans; processed vegetables; dried vegetables; preserved vegetables; canned vegetables; processed nuts, including peanuts chestnuts and edible nuts; processed chick peas; processed peas; sausages; preserved fruits; canned fruits; dried fruits, processed anchovies; oysters, prawns, shellfish and shrimp, all not live; preserved fish; salted fish; dried fish; canned fish; dried potatoes; dried tangerines; processed edible seeds; dried mushrooms; prepared mushrooms; mollusca; pork; processed dates and prunes; dried preparations for making soup; canned soups; processed almonds; dried apricots; processed figs; jellies for food; sliced cuttlefish and dried cuttlefish for human consumption; processed edible sesame seeds 30 - Spices; cinnamon; spices in the form of powders, including tumeric powders for use as a condiment, saffron for use as a seasoning and curry powders; sauce powders; cloves; vermicelli noodles; noodles; rice; rice cakes; ground pepper; sugar; husked barley prepared for human consumption; prepared pearl barley; sago; star aniseed; prawn crackers; crackers; dried whole-wheat grains; honey; processed corn; candy for food; soy sauce; dried chili peppers for use as seasoning; processed garlic toppings for cooking; preserved garlic for use as seasoning; desserts of nut, fruit and/or jelly origin	GEOK KIE POH (SINGAPORE INDIVIDUAL) 37 TELOK BLANGAH RISE #13-309 SINGAPORE 090037 Singapore

THE FRESHEST PRODUCE IN HAMPTON ROADS!

 <p>FRESH GREEN ASPARAGUS \$1.49 <small>per lb.</small></p>	 <p>1 POUND BAG THICKER SPINACH 2 ¹/₄</p>	 <p>GOLDEN RING BANANAS 3 ¹/₄</p>
 <p>1 POUND BAG SWEETHEART TOMATOES 2 ¹/₄</p>	 <p>1 POUND BAG ANjou & BOSS PEAR \$1.49 <small>per lb.</small></p>	 <p>1 POUND BAG RED, BLACK & WHITE SEEDLESS GRAPES \$2.99</p>
 <p>1 POUND BAG SPINACHES 2 ¹/₇</p>	 <p>1 POUND BAG CALIFORNIA NATURAL PINEAPPLES \$6.99</p>	 <p>1 POUND BAG CLASSIC SALAD MIX \$2.99</p>
 <p>TORTELLINI PESTO SALAD ONE POUND PASTA & THE BEST OF PESTO \$2.49</p>		 <p>1 POUND BAG FLE BRANLEIGH GALA APPLES \$1.49</p>
		 <p>1 POUND BAG CALIFORNIA BRISNAN AVOCADOS 2 ¹/₆</p>

 <p>1 POUND BAG GREEN OR PURPLE PINEAPPLES 2 ¹/₄</p>	 <p>1 POUND BAG WHITE, PURPLE OR BROWN ONIONS \$2.99</p>	 <p>1 POUND BAG FRESH BELL PEPPERS 2 ¹/₇</p>	 <p>1 POUND BAG SPINACH CARROTS 2 ¹/₅</p>
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Eating a diet rich in fruits and vegetables as part of an overall healthy diet may reduce risk for type 2 diabetes.

<h2>FROZEN FOODS</h2> <p>Finest Quality and Variety</p>			<h2>DAIRY</h2> <p>Largest Section In Hampton Roads</p>		
 <p>1 POUND BAG FROZEN PIZZA \$3.99</p>	 <p>1 POUND BAG FROZEN FRUIT 2 ¹/₄</p>	 <p>1 POUND BAG FROZEN VEGETABLES \$2.49</p>	 <p>1 POUND BAG FROZEN YOGURT \$2.49</p>	 <p>1 POUND BAG FROZEN FRUIT \$2.49</p>	 <p>1 POUND BAG FROZEN VEGETABLES \$2.49</p>
 <p>1 POUND BAG FROZEN PIZZA \$3.99</p>	 <p>1 POUND BAG FROZEN FRUIT \$5.99</p>	 <p>1 POUND BAG FROZEN VEGETABLES \$7.99</p>	 <p>1 POUND BAG FROZEN YOGURT \$4.99</p>	 <p>1 POUND BAG FROZEN FRUIT 2 ¹/₄</p>	 <p>1 POUND BAG FROZEN VEGETABLES \$2.99</p>
 <p>1 POUND BAG FROZEN PIZZA \$2.99</p>	 <p>1 POUND BAG FROZEN FRUIT \$5.99</p>	 <p>1 POUND BAG FROZEN VEGETABLES \$7.99</p>	 <p>1 POUND BAG FROZEN YOGURT \$2.99</p>	 <p>1 POUND BAG FROZEN FRUIT \$4.99</p>	 <p>1 POUND BAG FROZEN VEGETABLES \$2.99</p>



Exhibit I

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing DECLARATION OF HEATHER J. KLIEBENSTEIN IN SUPPORT OF APPLICANT'S MOTION FOR SUMMARY JUDGMENT was served upon the following attorney of record for Opposer by First Class Mail, postage prepaid, this 26 day of September, 2008:

Marsha G. Gentner
Jacobson Holman PLLC
400 Seventh Street, N.W.
Washington, D.C. 20004



Scott W. Johnston

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Odom's Tennessee Pride Sausage, Inc.,)	Opposition No. 91182173
)	
Opposer,	)	Mark: Boy Design
)	
v.	)	Serial No.: 77/148,503
)	
FF Acquisition, L.L.C.,	)	Filing Date: April 4, 2007
)	
Applicant.	)	Published: October 2, 2007

**DECLARATION OF SUSAN MAYO IN SUPPORT OF FF ACQUISITION, L.L.C.'S
MOTION FOR SUMMARY JUDGMENT**

I, Susan Mayo, do hereby state and declare under oath as follows:

1. I am currently the Vice President of Consumer Affairs and Public Relations for FF Acquisition, L.L.C. ("FF"). I make this declaration in support of FF Acquisition, L.L.C.'s Motion for Summary Judgment.

2. FF currently does business as Farm Fresh Supermarket. Farm Fresh Food & Pharmacy, which later became Farm Fresh Supermarket, was formed in 1957 as a neighborhood grocery store with world class services. There are currently forty-six (46) Farm Fresh Supermarket stores located in the United States.

3. Farm Fresh Supermarket currently uses the following designation in connection with its supermarket services in U.S. commerce:



4. This design mark has been used in commerce since at least as early as March 28, 2007. Farm Fresh Supermarket uses the design mark in connection with retail grocery stores. For example, Farm Fresh Supermarket uses the design mark on supermarket newsletters and advertisements.

5. A similar design has been used since 1977 in connection with services provided by Farm Fresh Supermarket as shown below:



The design is virtually identical to the design mark referenced in Paragraph 3, less the hands and legs. This mark has been continuously used in Farm Fresh Supermarket stores since at least as early as October 5, 1977. The design was also federally registered as Registration No. 1,222,958 in January 4, 1983.

6. Even though the design marks referenced in Paragraphs 3-5 have been used continuously in commerce since 2007 and 1977, respectively, to my knowledge there have been no instances of confusion between either of these marks and Odom's Tennessee Pride Sausage, Inc. ("Odom's") design mark at issue in this case.

7. In addition, Odom's has never objected to FF's use or registration of the mark shown in Registration No. 1,222,958.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting

therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: 9/24/08

Susan Mayo
Susan Mayo